

**Joint Submission by GENDERDOC-M and ILGA-Europe¹ to the
Committee of Ministers of the Council of Europe
in the case GENDERDOC-M v Moldova no. 9106/06, judgment of 12 June 2012**

I. SUMMARY

1. The case concerns the banning of a demonstration by GENDERDOC-M in Chisinau in May 2005 (violation of Article 11), lack of effective remedy (Article 13 in conjunction with Article 11), and discrimination (Article 14 in conjunction with Article 11).
2. This submission is a response to the Moldovan authorities' Action Report dated 9 January 2017 ("the Action Report"). It also provides information on the most recent Chisinau Pride march, which took place on 21 May 2017.
3. The Action Report presented a very positive picture, concluding that the Republic of Moldova had complied with its obligations under Article 46, paragraph 1, of the Convention and that the supervision of execution of this judgment should therefore be closed.
4. In their subsequent Decision,² the Ministers' Deputies *inter alia* "noted with satisfaction that the applicant organisation has been holding events without undue restriction imposed by the authorities", but "expressed serious concern with regard to the legislative initiative aimed at introducing liability for "propaganda of homosexual relations"."
5. GENDERDOC-M acknowledges that the Moldovan authorities have made significant progress in recent years regarding the authorisation and protection of Pride marches. However their practice in 2016 and 2017 of cutting short Pride marches rather than dispersing counter-demonstrators illegally blocking the route of the march means that the LGBTI community still does not have full and effective enjoyment of the right to freedom of assembly. Moreover, through failing to prosecute counter-demonstrators for certain illegal, bias motivated actions, or through treating some of these actions as no more than ordinary hooliganism, the authorities are, in effect, tacitly accepting the behaviour of the counter-demonstrators.
6. In addition, serious concerns remain over legislative initiatives aimed at suppressing information about same-sex relations. The bill which seeks to introduce liability for "propaganda of homosexual relations" has not been withdrawn. Moreover, only two weeks after the above-mentioned Decision of the Committee of Ministers, a proposal was put forward in Parliament which would amend the Law on Protection of Children from the Negative Impact of Information both to define information of "homosexual character" as information that adversely affects children, and to prohibit the dissemination of "images that promote homosexuality".
7. The Committee of Ministers is respectfully requested, *inter alia*, to ask the Moldovan authorities to provide details of the steps they will take to ensure that counter-demonstrators are not allowed to obstruct the route of the Pride march planned for May 2018; and to explain the

¹GENDERDOC-M is an NGO working for the rights of LGBT people in Moldova. ILGA-Europe is the European Region of the International Lesbian, Gay, Bisexual Trans and Intersex Association.

²1280th meeting (7-10 March 2017)

grounds on which the authorities decided not to prosecute those responsible for blocking the route of the 2016 and 2017 Pride marches.

II. The 2016 March

8. The Action Report states:

“3. No incidents or actions that might have disturbed the public order have been registered in the period of time in which the participants were at the starting point of the march. But, as demonstrators were marching, a group of people who were on the 4th floor of a building started to throw eggs towards them. Taking into account actions of counterdemonstrators, in order to avoid any clashes and violence the police, showing high diligence, decided to redirect demonstrators to another itinerary than the one initially agreed on.”

This account does not address adequately the freedom of assembly concerns that arose during the 2016 Pride march. In addition, it is misleading, in that it implies that the march continued on another route. That was not the case, as described below.

9. On 22 May 2016, GENDERDOC-M held a Solidarity Pride March "Without Fear" in the center of Chisinau, which was attended by GENDERDOC-M activists and community, as well as supporters from other civil society organizations, LGBTI groups from abroad, and diplomatic missions. The march was preceded by negotiations and preparations that involved extensive communications with the city administration and law enforcement. The march was well-protected by a heavy police presence.
10. 20 minutes after the start of the march, the route was blocked by 150 - 200 counter-protesters taking part in an unauthorised demonstration. Other counter-protesters were throwing eggs from a nearby building. Instead of clearing the counter-protesters out of the way and allowing GENDERDOC-M's peaceful demonstrators to proceed on the agreed route (or indeed preventing the counter-protesters occupying the route in the first place), the police evacuated the marchers, denying them the opportunity to complete the route, only half of which had been covered. Thus, the authorities failed to ensure full enjoyment of freedom of assembly.
11. The actions of the counter-protesters were in violation of article 67(2) of the Code of Administrative Offences.³ This stipulates *inter alia* that organising and holding meetings without notifying the mayor's office, and hindering the organisation or holding of meetings according to the law, are violations of the law, and subject to fines. GENDERDOC-M filed a complaint to the police for investigation of the perpetrators in respect of these violations of the law, but so far as they are aware no investigation or prosecution followed.
12. The actions of the counter-protesters were also in violation of Article 8 (b) of the Law no. 26-XVI of 22 February 2008 "Incitement to discrimination or public violence", which prohibits assemblies which have the purpose of "instigation to public discrimination or violence".⁴ GENDERDOC-M filed a complaint to the Ministry of the Interior, but so far as they are aware, no

³ Article 67 (2) of the Code of Administrative Offences no. 218 of 24.10.2008 (Cod Contravențional al Republicii Moldova). For English language version of text, see:

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/86500/97673/F144678591/MDA86500.pdf>

⁴ For English language version of this law, see <http://www.refworld.org/docid/4c3c81092.html>

attempt was made by the authorities to prosecute the counter protesters for violation of this law.

13. The Action Report also states:

“4. The police qualified some actions of the counter-demonstrators as hooliganism; the perpetrators have been held liable according to the Contravention Code (*Codul cu privire la contravențiunile administrative*) and sanctioned with fines of 600 and 800 Moldovan lei.”

14. The counter-demonstrators engaged in several different types of illegal action: the throwing of eggs or stones, attempts to break through the police cordon, blockage of the march itinerary, and hate speech directed at the march participants. Only those responsible for throwing eggs were prosecuted, and then only for ordinary hooliganism.⁵ All these different types of illegal action were clearly motivated by hatred and should have been treated as bias motivated offences.⁶

15. A further concern relates to the way in which the police conducted the evacuation of the Pride marchers. Contrary to the previously negotiated plan for a possible emergency evacuation, the police did not allow march participants to leave the place by buses provided by GENDERDOC-M, which were moving along the march on a parallel street, nor did they create a safety corridor for participants to reach the buses provided by organizers. Instead, the police forced participants to embark on buses that had been used to bring security police to the site of march. The drivers of these buses were homophobic, and threatened participants with violence and hate speech during the evacuation. Thus, their failure to abide by the agreed emergency plans gave rise to a situation likely to deter participants from exercising their right to freedom of assembly in future.

16. The Action Report makes several references to the fact that GENDERDOC-M has publicly expressed its appreciation for the actions of the authorities during the march. Apart from the above described incident, the march was well protected, a fact which has been welcomed publicly by GENDERDOC-M. GENDERDOC-M has taken this position both because it is right to recognise the progress that has been made, but also because it wishes to assure members of the LGBTI community and their supporters that they will be safe if they attend the march. This praise in no way lessens concerns about the other issues raised in this submission.

III. The 2017 March

17. The 2017 Pride march followed the same pattern as the 2016 Pride march. The march was again preceded by intensive negotiations and preparations with the law enforcement authorities. It was well protected by a heavy police presence and well-organised security measures.

⁵Video evidence of the disruption of the Without Fear solidarity march:

<https://www.youtube.com/watch?v=TNB6-1IbECA>

⁶ Article 176 of the Criminal Code (Breach of equality in rights of citizens - Încălcarea egalității în drepturi a cetățenilor) provides for fines or up to 2 years in prison for placing discriminatory messages and symbols in public spaces; the Criminal Code also provides punishment for committing violations with aggravating circumstances, such as social hatred. <http://lex.justice.md/md/331268/>.

18. However, despite the march being well protected, and despite it following the route that had been agreed with the relevant authorities in advance, it was blocked by approximately 100 counter-protesters some 20 minutes after its launch. As in 2016, the police failed to clear the route, and insisted on evacuating the march participants rather than dispersing the counter-demonstrators. In doing so, they acted contrary to the plan negotiated and agreed upon with the organisers, which included an assurance that the police would not allow counter-demonstrators to block the route of the march, and that the route itself would be twice as long as the previous year.
19. As in 2016, the authorities again failed to prosecute the counter-demonstrators for violating freedom of assembly law in the Code of Administrative Offences and the law on "Incitement to discrimination or public violence", despite a complaint by GENDERDOC-M to the Ministry of the Interior.
20. GENDERDOC-M would like to stress that the Moldovan police are perfectly capable of preventing attempts at disturbance or disruption of the type and scale experienced during the Pride marches in 2016 and 2017. This has been shown on several occasions at government-sponsored public events when attempts at disturbance by counter-demonstrators are immediately stopped.

IV. Legislative initiatives aimed at introducing liability for “propaganda of homosexual relations”.

21. The legislative initiative to amend the Contravention Code by adding Article 88, “Propaganda of homosexual relationships among minors” is still pending before Parliament.
22. It is a matter of further concern that, on 24 March 2017, eight Members of Parliament from the Socialist Party registered an additional draft law, No 86, “On amending and completing the Law on Protection of Children from the Negative Impact of Information”.⁷ This proposal would amend the afore-mentioned law by including:
 - a new “basic definition”: “homosexuality – a sexual perversion that constitutes a sexual attraction towards individuals of the same sex; pederasty, sexual inversion” (in Article 1);
 - information of “homosexual character” as information that adversely affects children (in Article 3);
 - “images that promote homosexuality” in the article prohibiting the dissemination of information with negative impact (in Article 4).⁸
23. The draft law aims to censor public dissemination of information about non-heterosexual relations and/or identities and will hit mass media outlets in the first place and civil society organisations working in the field of human rights in the second place, especially in carrying out public activities such as Pride marches.

⁷Draft law #86 data, including its texts in Romanian and Russian, from 24 March 2017
<http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3682/language/en-US/Default.aspx>

⁸Law on Protection of Children from the Negative Impact of Information, current version
http://lex.justice.md/viewdoc.php?actio_n=view&view=doc&id=347276&lang=1

The former chairman of the Socialist Party, Igor Dodon, was elected the President of Moldova in November 2016.

V. Recommendations

24. We respectfully recommend that the Committee of Ministers request the Moldovan authorities to:

- Provide details of the steps they will take to ensure that counter-demonstrators are not allowed to obstruct the route of the Pride march planned for May 2018;
- Explain the grounds on which the authorities decided not to prosecute those responsible for blocking the route of the 2016 and 2017 Pride marches;
- Explain what general measures they are taking to secure criminal liability for homophobic and transphobic hate crimes (beyond the draft law currently pending in Parliament);
- Explain what legal purpose the draft law No 86, “On amending and completing the Law on Protection of Children from the Negative Impact of Information” serves and how it is compatible with Article 8 of the Convention and ECtHR judgment in the case of *Bayev and Others v Russia*?