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Meeting: 1201 meeting (3-5 June 2014) (DH)

Item reference: Communication from NGOs (GENDERMOC-M and Ilga Europe) (09/05/2014) in the case of Genderdoc-M against Republic of Moldova (Application No. 9106/06) and reply from the authorities (21/05/2014)

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Réunion : 1201 réunion (3-5 juin 2014) (DH)

Référence du point : Communication d’ONG (GENDERMOC-M et Ilga Europe) (09/05/2014) dans l’affaire Genderdoc-M contre République de Moldova (Requête n° 9106/06) et réponse des autorités (21/05/2014) (anglais uniquement)

Joint Submission by GENDERDOC-M and ILGA-Europe 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

In accordance with Rule 9.2 of the Committee of Ministers' Rules of Procedure, we hereby submit information as regards the execution of the above mentioned judgment for consideration at the meeting of the Committee of Ministers on 3 – 5 June 2014.

1. **INTRODUCTION**

GENDERDOC-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.

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).

This submission is a response to the Moldovan authorities' Action Plan for the execution of the judgment in this case dated 27 March 2014. Statements in the Action Plan imply that GENDERDOC-M is now able to exercise the right to freedom of assembly in support of the rights of LGBT people to an acceptable degree. This submission presents evidence that this is not the case. It concludes that to move the case from the enhanced supervision procedure to the standard supervision procedure, as proposed by the Moldovan authorities, would not be justified at this time.

2. **COMMENTS ON CERTAIN STATEMENTS IN THE ACTION PLAN IN THE SECTION UNDER THE HEADING “INDIVIDUAL MEASURES”**

A number of statements in the Action Plan give the impression that GENDERDOC-M is able to hold demonstrations in support of the rights of LGBT people freely. This has not been, and is not, the case. In this section we contrast these statements with the events concerned.
a. GENDERDOC-M’s access to freedom of assembly in the period 2005 – 2012

“In relation to individual measures, it must be noted that since the events examined in the judgment (2005) the applicant organisation held its assemblies and demonstrations every year. Although it may be alleged by the applicant organisation that third parties and religious organisations circumscribe the most of such meetings and demonstrations, there have been no substantial restrictions on the part of the authorities.” (Paragraph 4 of the Action Plan)

And:

“The authorities note however that the manifestations held subsequently by the applicant organisation, taken as a whole, reveal that the violations found in the present judgment have not repeated since and the applicant organisation can hold such demonstrations freely.” (Paragraph 4 of the Action Plan)

The above statements are factually incorrect.

Between 2005 and 2008 GENDERDOC-M made several attempts to exercise the right to freedom of assembly. Almost all were banned. Where appeals were successful, they came long after the date of the proposed events, so that there was no effective remedy. In 2008, following the introduction of Law no.26 on assemblies, it became possible to hold demonstrations without prior authorisation where fewer than 50 persons are involved, provided prior notification is given. On 11 May 2008 GENDERDOC-M tried to take advantage of this provision, despite an unlawful ban by the Mayor of Chisinau. However the attempt had to be abandoned when the bus carrying their demonstrators was surrounded by a hostile and potentially violent mob. Police looked on from a distance, failing to provide protection.1

In 2009 the Board of GENDERDOC-M took the decision not to hold public events, owing to the absence of political support, the unstable political situation, and the risk of the scapegoating of the LGBT community.2

In 2010 GENDERDOC-M intended to organize an assembly in support of the Law on ensuring equality. Chisinau City Hall banned the peaceful demonstration because it was planned by LGBT persons. It was supported by the Court of Appeal, which ordered the relocation of the event to the Green Theatre, an open-air theatre on the outskirts of the town. GENDERDOC-M refused this “offer”, and instead held a short (10 minutes), unauthorised and unpublicised “flash-mob” in front of City Hall.3

2 Statement made by the GENDERDOC-M board in April 2009
3 Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity -
In 2011 GENDERDOC-M did not attempt to hold a major freedom of assembly event. In 2012 GENDERDOC-M held a small rally on 17 May with less than 50 people, to commemorate the events of 11 May 2008, when LGBT activists and their supporters faced aggressive opposition. The city authorities were not notified, to avoid any problems.

b. GENDERDOC-M’s access to freedom of assembly in 2013

“Among many recent relevant examples of good practices, the Government underlines 2013 events when the applicant organisation, the LGBT community and its followers freely held about five public manifestations.” (Paragraph 6 of the Action Plan)

As demonstrated case by case below, the events to which the Action Plan refers in paragraph 6 are not evidence that the LGBT community and its followers are able to “freely” hold public manifestations.

“On 14 February 2013 the LGBT community marched through Chisinau declaring implementation of their constitutional right to peaceful assembly with no fear of being attacked.”

This demonstration was entitled “Love instead of hate”, and involved just eight individuals gathering in front of the Ministry Internal Affairs in Chisinau and walking to the Great National Assembly Square. The City Hall was notified and the activists were protected by the police.

“On 19 May 2013 LGBT community protested in front of the USA embassy and the Art Academy in Chisinau. Their itinerary was secured by hundreds of police officers and undercover agents, who cordoned off the area around the protesters, stopped the road and pedestrian traffic. The right of LGBT community to hold freely its assemblies was supported by declarations of politicians, government officials and diplomats”.

This event was the main attempt in 2013 by GENDERDOC-M to exercise the right to freedom of assembly. A detailed account is provided in the appendix. It demonstrates that very significant barriers to the exercise of this right still exist. In particular:

- The Mayor and the City Hall initiated a lawsuit to ban the march, or alternatively, to move its location from the city centre to the Green Theatre on the outskirts of the city.
- The subsequent court case involved serious breaches of due process. GENDERDOC-M only learned of the lawsuit from the press, was not allowed time

Sociological Report: Moldova - a report prepared by independent consultants for the Office of the Council of Europe Commissioner for Human Rights
to prepare for the trial proceedings, and was called to court on a Saturday without prior summons and without a copy of the lawsuit.

- The judgment was pronounced on the evening before the planned march, so that GENDERDOC-M was effectively denied the right of appeal, despite this requirement being emphasised by the European Court of Human Rights in GENDERDOC-M v. Moldova.
- The judge ruled that GENDERDOC-M’s march should be relocated to the Green Theatre, an open-air theatre unsuited for a march, and in a remote and secluded park far from the city centre and governmental buildings. The justification was the hostility of two other organisations, and the threat they posed to the safety of GENDERDOC-M and LGBT community organisations.
- Far from being sanctioned, these two organisations were allowed to hold their own demonstrations at the same location and at the same time as that originally requested by GENDERDOC-M.
- GENDERDOC-M decided not to relocate the march to the Green Theatre, in part because of its inappropriate location and structure, in part because of police advice that its design made it an unsafe venue for a demonstration. GENDERDOC-M therefore chose to hold an unauthorised demonstration in front of the US Embassy, which was protected by the police.
- Concerns about safety and security proved justified. The demonstration had to be terminated by the organisers after 20 minutes, and a “march” of 100 steps, as police advised that counter-demonstrators were on their way.

“Another manifestation was held on 12 June 2013 in front of the Embassy of the Russian Federation against the Russian law on prohibition of homosexual propaganda to minors.”

This demonstration involved just two people standing outside the Russian Embassy for 15 minutes. The City Hall was not informed due to the very small number of activists.

“Similar manifestations were held by the applicant organisation and other organisations as ““GayBelarusi”, Amnesty international, Hyde Park, Antidiscrimination coalition, on 5 July 2013 and 6 September 2013 respectively.”

GENDERDOC-M participated in these joint manifestations organised by other human rights organisations. There were less than 22 people all together and City Hall was informed about the events by the organising NGOs.

c. GENDERDOC-M's recent public statements more positive in tone

“According to the applicant organisation’s own reports on each of its pride parades and demonstrations, a certain positive evolution may be sensed, particularly what concerned securing of the participants’ safety against provocateurs and contra manifestations”.

(Paragraph 4, of the Action Plan)
It is the case that GENDERDOC-M’s public statements have adopted a more positive tone in the recent past. However, this must be seen in the historical context: from 2005-2012 virtually all public demonstrations by the organisation were banned, or otherwise prevented from taking place. Against this extremely negative background, there has been something of an improvement, although that does not mean that GENDERDOC-M is freely able to exercise the right to freedom of assembly.

d. **In summary:**

The demonstrations or marches in which GENDERDOC-M has participated in 2013 have either been effectively prohibited, or so small and unpublicized as not to be significant in this context, or led by other organisations which are not LGBT.

3. **COMMENTS ON CERTAIN STATEMENTS IN THE ACTION PLAN IN THE SECTION HEADED “GENERAL MEASURES”**

**Legislation**

*Non-discrimination in conjunction with the right to peaceful assembly* (paragraphs 14 – 19 of the Action Plan)

The Law no. 121 on ensuring equality protects against discrimination on the ground of sexual orientation only as regards employment. Sexual orientation is not listed among the protected grounds of discrimination for the law as a whole, which makes it possible that a current lawsuit by GENDERDOC-M against the Mayor and City Hall for discrimination will be rejected.

Neither the Criminal Code nor the Contravention Code sanction discrimination based on sexual orientation. Sanctioning of such discrimination is impossible to achieve due to the fact that sexual orientation is not expressly mentioned in these Codes and because the Contravention Code sanctions only discrimination in employment, education and access to goods and services.

**Other general measures** (paragraphs 26 – 28 of the Action Plan)

GENDERDOC-M is not aware of, and the Moldova Government fails to communicate, whether the Center District Court of Chisinau, which examines the City Hall lawsuits against GENDERDOC-M on freedom of assembly, had access to the Court’s judgment of 12 June 2012 in Romanian. As GENDERDOC-M was able to observe, the judge that ruled on 18 May 2013 concerning GENDERDOC-M’s march of 19 May, was unfamiliar with the judgment. This was also the case regarding the judge who is presiding over GENDERDOC-M’s current discrimination lawsuit against the Mayor and City Hall.
A lack of familiarity with the Court’s judgment may also explain why, in relation to GENDERDOC-M’s march of 19 May, the judge accepted reasoning that is specifically rejected by the Court. Thus, the judge accepted as justification for banning or relocating GENDERDOC-M’s assembly the fact that GENDERDOC-M’s views are “unpopular” and the view that it is “immoral” for LGBT people to hold assemblies in the city centre. Such reasoning enables the Mayor and the City Hall to ask for the relocation for GENDERDOC-M’s assemblies but not those of their opponents.

GENDERDOC-M believes that this judgment should be included expressly in trainings of judges and police officers, in particular as regards the proper application of domestic legislation on freedom of assembly and non-discrimination. GENDERDOC-M is entitled to appeal against a decision that relocates its march or a demonstration, before the event has been planned. It is also entitled to a fair trial where it has all the documents lodged against itself and can prepare its own evidence.

4. CONCLUSION

We consider that the experiences set out above provide clear evidence of the continuing failure of the Moldovan Government to secure the applicant’s rights to freedom of assembly, freedom of expression, effective remedy and non-discrimination. The lack of clarity in court’s practice and in domestic laws, the homophobic speeches of public officials and in particular on the part of the Mayor, disadvantage the applicant on account of the sexual orientation of the community it represents. We believe that this situation indicates the need to keep the execution of this judgment under enhanced supervision.

7 May 2014
Appendix

A description of the events surrounding the 2013 IDAHO demonstration

The attempt by GENDERDOC-M to hold a march on 19 May 2013 is an example of the continued violation of the applicant’s rights to freedom of assembly, freedom of expression and non-discrimination, and evidence of the Moldovan Government’s failure to guarantee peaceful organisation of the annual pride event.

Within the annual Pride Festival “Rainbow over the Dniester 2013”, the applicant intended to hold, in the centre of Chisinau city, a march entitled “LGBT for Traditional Values”. The purpose of the march was to show to Moldovan society that LGBT people share the same fundamental values, such as love, family and mutual respect, that are generally promoted in society.

On 25 April 2013, GENDERDOC-M submitted a notification to the City Hall of Chisinau expressing its intention to hold the march in the city centre on 19 May 2013. On 15 May 2013, the Mayor of Chisinau made public homophobic statements in which he suggested, among others, that LGBT people should stay at home, that it is best to have men and women together as God likes it and that it is inadmissible to march and show your sexual preferences.

The Mayor and the City Hall filed a lawsuit at the Center District Court of Chisinau against GENDERDOC-M asking for a ban of the march or at least for the march’s location to be moved from the city centre to the Green Theatre on the outskirts of the city.

The applicant only learned about this lawsuit from the press. There was no information on the court’s webpage and no summons sent to the applicant’s headquarters.

During the trial proceedings, which took place on Saturday 18 May 2013 from 2 pm till 8 pm, it emerged that on 15 May 2013, two organisations had submitted notifications to City Hall to hold demonstrations in the same place and at the same day as the demonstration proposed by GENDERDOC-M. One, named AOBCVIRA, proposed a rally to protest against “faulty family values promoted by GENDERDOC-M”, while the other, “Moldova Mea Association”, proposed a rally entitled “Propaganda of homosexuality: Counter-demonstration”. Both notifications indicated that they planned to protest against the rights of LGBT people and threatened to do so in an abusive manner.

Both organisations were able to hold their rallies on 19 May 2013 in the city centre without any opposition from the local authorities or law-enforcement bodies. Neither City Hall nor the Mayor lodged a lawsuit against these two organisations asking for their rallies to be banned, or moved to other locations. Instead they argued in court that the hostility of these two organisations, and the threat which they posed to the safety of
GENDERDOC-M and LGBT community members, made it preferable not to hold the march or at least to ban it from centre of Chisinau. The Center District Court of Chisinau accepted these arguments.

The judge refused to allow time to the applicant to prepare for the trial proceedings. GENDERDOC-M and their legal counsel were called to court on a Saturday without prior summons and without a copy of the lawsuit. The judge admitted representatives of religious groups and of some religious NGOs opposed to the march to be present at the hearing, creating an intimidatory environment for the applicant.

The judgment was pronounced at 8 pm on 18 May 2013, on the evening before the planned march, which was due to start at 10 a.m. on 19 May 2013. As a consequence, the applicant was effectively denied the right to appeal before the planned event. In its judgment in GENDERDOC-M v. Moldova, the European Court of Human Rights had emphasised that the timely right to appeal against the prohibition of a demonstration was fundamental to the exercise of the freedom of assembly and to the enjoyment of an effective remedy.

The Mayor’s lawsuit was admitted and the judge ruled that the applicant’s march should be relocated to the Green Theatre. This is in a remote and secluded park far from the city centre and governmental buildings. It is an open-air theatre facility with a stage and benches in a zone surrounded by a fence. It has only one entrance that also serves as the exit. Its stage and benches make a march impossible.

The judgment relocating the applicant’s march to the Green Theatre became news instantly. The representatives of the Ministry of Interior Affairs in charge of ensuring the security and safety of march participants advised against holding the march in the Green Theatre due to its particular construction. The applicant was also concerned that since representatives of religious groups and NGOs were present and knew about the court’s ruling, they would come to the Green Theatre. This concern was justified. The media showed numerous groups leaving the centre of the Chisinau city and marching to the Green Theatre “to meet LGBT people”. Others were already there waiting for the applicant and its supporters.

Police officers in charge of applicant’s safety during this march informed the applicant of these developments. It was decided to relocate the march and hold it in front of the US Embassy. The march was short, 100 steps, and was cut short because police informed the applicant that counter-demonstrators were heading towards the location. The event was terminated after opening speeches from some foreign dignitaries, and the appearance of EU Enlargement Commissioner, Mr Stefan Fule, who stopped by as a gesture of support for the LGBT community. The march lasted 100 steps and approximately 20 minutes.
On 12 July 2013 the applicant lodged a lawsuit against the Mayor of Chisinau, Dorin Chirtoaca, for his homophobic speeches and against City Hall for discrimination on the ground of sexual orientation using the Law nr.121 on Ensuring Equality. The final judgment will be delivered on 13th May 2014.
THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA
Agent for the Government

in Chisinau, on 20 May 2014

sent by post and e-transmission

Department for the Execution of Judgments
of the European Court of Human Rights
Directorate General of Human Rights and
Rule of Law, Secretariat General

Ref: DG1/ÖD/VK/TC/Ima

Subject: Communication from the applicant in the case of
Genderdoc-M v. the Republic of Moldova
(application no. 9106/06, judgment of 12 June 2012, final on 12 September 2012)

Dear Madam/Sir,

Hereby, acting on behalf of my Government and as instructed, I would like to reply to
the ILGA and Genderdoc-M’s joint submission and inform the Committee of Ministers on the
authorities’ position on the statements made therein.

As it follows from the submission (part a), the applicant association disputes the
Government’s description of its individual situation, specifically the demonstrations held in the
period between the events that were subject to the Court’s assessment (April 2005 – October
2006) and the date of the judgment (July 2012). It should be mentioned that the Government’s
Action Plan referred briefly to this period in order to describe the evolution of the situation and
to draw a difference between the applicant organisation’s situation in 2005 and in the following
years. It is important to highlight that the events during this period are not covered by the Court’s
judgment. Moreover, they are preceding the judgment. Thus, they are falling out of the scope of
execution and in no way can be brought as examples of the authorities’ alleged failure to execute
the individual measures in the present case.

Arguing on the proportionality of the measures undertaken by the authorities and the
manner how they have handled the situation during this period would amount to a genuine
dispute, which should be solved only through a judicial review. Therefore, the description of
events that took place in November 2006 - July 2012 should serve only for the sake of
comparative assessment and of the progresses made in this regard. These facts should not be
disputed in the execution procedure like as a would-be judicial litigation. The assessment of the
events should be taken as a whole and not separately. In this sense, the scope and role of the
execution proceedings should not be forgotten.

As to the demonstrations held by the applicant organisation after the judgment (part b of
the submission), the Government reiterates that there have been significant progresses in the
situation of the applicant organisation since 2012. In its submission, the applicant organisation
alleges that its right to hold freely assembly in 2013 was barred by the local authorities’
judicial request to change the venue of the demonstration, the alleged unfair judicial examination
thereof, inappropriate conditions of the place where the demonstration was relocated, etc. At the same time, the submission fails to report that the demonstration took place in tight cooperation with the Ministry of Internal Affairs that ensured the security of the demonstration and its participants. To enable the police forces to effectively protect the demonstrators, on the advice of the Ministry of Internal Affairs the participants agreed to relocate their demonstration in the place other than one ordered by the court. The applicant organisation described on its web-site that the march took place under the police protection and was secure. This example, as well as the pride parade organised on 17 May 2014, clearly shows that the applicant organisation benefits from a special positive treatment on behalf of the authorities.

In addition to its Action Plan, the Government reports that during the last pride parade of 17 May 2014 the authorities also provided an extensive police protection to the demonstrators. The police and the applicant organisation have jointly planned the security measures. The counter-demonstrators and provocateurs were effectively stopped from hindering the entire event and the demonstration successfully followed its itinerary as planned. The authorities’ scope was to avoid violence and clashes from occurring, either from one or from both sides. Thus, the authorities fully complied with its obligation to secure both rights of peaceful demonstrators and counter-demonstrators. The authorities fulfilled its role in barring the access on the spot of aggressive counter-demonstrators aiming to circumscribe the applicant organisation’s event. All these facts, taken as a whole, reveal that the authorities have actually treated the applicant organisation with a particular diligence by taking into consideration its vulnerability as indeed the Court suggested in its judgment.

The applicant association also asserts that other public protests held in 2013 were not of any value because there were small, unimportant and casual occurrences. However, these events show the very essence of the reform undertaken by the authorities. After the reform, the demonstrations do not require any authorisation procedure. The local authorities should be notified only in case of meetings involving over 50 persons (unless the applicant association requires the authorities’ assistance for security or other reasons). The authorities cannot simply ban the event but to secure its peacefulness. Each measure taken or to be taken by the authorities, as for example the change of venue or the protection measures, is subjected to judicial review well in advance to the event.

In its submission, the applicant organisation brings new accusations against the authorities. It disputes new facts, advances new claims and new alleged breaches of the Convention rights, disregarding the fact that the present proceedings are about the supervision of execution of the judgment and it is not a new trial with the authorities. Any new issues brought by the applicant organisation on the alleged violation of its rights should be subjected primarily to a judicial review and to the exhaustion of the domestic remedies described by the authorities in their Action Plan.

To conclude, the Government emphasizes that there is an essential progress in the freedom to hold assemblies in Moldova, including in ensuring the right of the LGBT community to organise demonstrations. The LGBT events that took place in Chisinau in 2013 and 2014 are a vivid example of it.

As to the comments concerning the general measures, the authorities will come up with additional information.

Indeed, the authorities do not yet seek closure of the Committee of Ministers’ supervision but ask for transfer the case into standard supervision procedure. This means that the authorities are still pursuing their obligations under Article 46 of the Convention, both on account of general and individual measures.

Yours faithfully,

Lilian APOSTOL
Agent for the Government