



**Joint Submission by GENDERDOC-M and ILGA-Europe<sup>1</sup> 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 22 – 24 September 2015.

**1. SUMMARY**

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' communication to the Committee of Ministers dated 6 July 2015. Statements in the communication imply that GENDERDOC-M is now able to exercise the right to freedom of assembly in support of the rights of LGBTI people to an acceptable degree. GENDERDOC-M acknowledges (and indeed has acknowledged in its public statements) the progress made by the law enforcement authorities, enabling the 2014 and 2015 pride parades to take place. However, GENDERDOC-M is still concerned that:

- the authorities do not fully comply with their obligation to protect persons demonstrating for the rights of LGBTI people and to prosecute counter-demonstrators who act illegally;
- some members of the police force take actions which GENDERDOC-M considers are intended to obstruct or otherwise limit the right of its members and supporters to exercise freedom of assembly.

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<sup>1</sup> 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.

Accordingly, we conclude in this submission 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.

Furthermore, we consider that general measures taken to comply with the judgment in this case should include enhanced training of the police with regard to their duty to facilitate enjoyment of the right to freedom of assembly for all members of society without discrimination, including the LGBTI community.

## **2. COMMENTS ON CERTAIN STATEMENTS IN THE COMMUNICATION IN THE SECTION HEADED “INDIVIDUAL MEASURES”**

### **2.1 Pride parades on 17 May 2014 and 2015**

As noted in the Government communication, the 2014 and 2015 Pride parades took place with the support of a significant police presence. Nonetheless, there were a number of serious concerns, as follows:

#### **May 2014 Pride parade**

The police failed to take certain measures to ensure the protection of the marchers (exposing them to unnecessary risk) and to prosecute aggressive counter-demonstrators:

- The police did nothing to arrest aggressive counter-protesters until they physically came among the participants and stole the rainbow flag and a banner.
- None of individuals that stole the banner and the flag were brought to justice.
- Members of the extremist group “Occupy Pedofily Moldova” and representatives of extremist Orthodox Christian groups were present and shouting threats, but none were arrested and charged with public disorder.

GENDERDOC-M lodged an application to the European Court of Human Rights in respect of these events in May 2015.

#### **May 2015 Pride parade**

The police again failed to take all necessary measures to protect the marchers and prosecute aggressive counter-demonstrators. In particular, before the march, the police advised that there were several aggressive groups preparing a violent response. However they failed to take the necessary preventive measures. For example, there were no arrests and no searches for firearms and possession of dangerous implements.

In addition, police officers took a number of steps which GENDERDOC-M considers were discriminatory and designed to inhibit the full enjoyment of the right of its members and supporters to freedom of assembly. Two weeks before the event GENDERDOC-M met with the police to finalise arrangements, and were given to believe that all security measures were agreed. However, shortly before the event the police proposed changes to the arrangements:

- Three days before, they insisted on changing the start time, with the result that many would-be participants could not be informed in time to take part. The police justified the change on the basis that the unionist movement (which campaigns for the unification of Moldova with Romania) was gathering that day, and could disrupt the GENDERDOC-M event. However this fact was known two weeks earlier, so that preventive measures could have been worked out between the parties at that stage.
- Two days before they tried to insist that GENDERDOC-M change the place of the demonstration to a bridge between a maternity hospital and a shopping mall. There is nothing else in the area, and, moreover, as the police planned to close the road to the bridge, few people would have seen the demonstration, thus negating its purpose. GENDERDOC-M refused to accept the proposal.

Behaviour by individual police officers also gave rise to concerns:

- 30 minutes prior to the beginning of the event GENDERDOC-M learned that the buses which they had booked for the participants to leave the assembly safely had been cancelled, potentially endangering participants. When questioned about this, a bus company official alleged that the buses had been cancelled following threatening phone calls by two police officers. GENDERDOC-M were unable to lodge an official complaint because the official refused to testify.
- The police officer in charge pressurised the leadership of GENDERDOC-M with repeated and wholly unnecessary telephone calls during the finalisation of the assembly, and at its end, in a manner which GENDERDOC-M consider amount to a form of harassment.

In its Communication, at paragraph 4, the Moldovan government comments that “The applicant organisation itself has expressed its satisfaction with the afforded protection and the reaction of the police, having considered that the authorities have discharged their positive obligations in protecting its pride parade (see the press release).” GENDERDOC-M has made public statements acknowledging in very positive terms the conduct of the police in making possible its recent public assembly events. These statements have been made against a background in which the police have had to deal with hostile counter-demonstrators. They should also be seen in context of the marked change compared to the past, when little or no protection was provided. In 2008, for example, an attempt to hold a freedom of assembly event had to be abandoned when the bus carrying the demonstrators was surrounded by a hostile and potentially violent mob, with the police looking on from a distance, failing to provide protection.<sup>2</sup>

In short, GENDERDOC-M have considered it appropriate to publicly support the positive developments in conduct by the law enforcement authorities, rather than emphasise their remaining concerns, which, as set out above, we consider to be serious.

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<sup>2</sup> ILGA-Europe - Lesbian, Gay, Bisexual and Transgender Rights - Freedom of Assembly - Diary of Events by Country – August 2008 – [http://www.ilga-europe.org/home/issues/assembly\\_prides/resources\\_on\\_freedom\\_of\\_assembly](http://www.ilga-europe.org/home/issues/assembly_prides/resources_on_freedom_of_assembly)

## **2.2 Freedom of assembly events prior to 2014**

The latest Government communication reiterates (at paragraph 1) the assertion made in its communication DD (2014) 691 dated 21.05.2014 that “since the events examined in the judgment (2005) the applicant organisation held freely its assemblies and demonstrations each year”. Our submission of 9 May 2014 demonstrated this was far from being the case. Between 2005 and 2012 only one demonstration took place. Furthermore, GENDERDOC-M’s May 2013 demonstration was opposed in the courts by the Mayor and City Hall. The subsequent failure of the courts to uphold GENDERDOC-M’s freedom of assembly rights is now the subject of an application to the European Court of Human Rights (see paragraph 2.4 below).

## **2.3 Events since the government’s communication: a demonstration in front of Bălți City Hall in July 2015**

On 14 July 2015 GENDERDOC-M held an assembly in front of Bălți City Hall, and marched towards the Bălți Police Inspectorate to protest against the failure of the authorities to investigate homophobic hate crimes adequately. While the assembly was held, some police officers tried to persuade GENDERDOC-M not to carry a rainbow flag, and not to stand in front of the City Hall doors, because of the presence of the monument to Stefan the Great, Moldova’s greatest mediaeval ruler. Two passers-by who shouted homophobic insults were quickly approached by the police, but not charged for using bad language, even though this is a misdemeanour.

## **2.4 Discrimination cases before domestic tribunals**

At paragraph 5 of the Communication, the government states that “As to the equality guarantees, the Government notes that the national antidiscrimination committee satisfied all the applicant organisation’s petitions concerning the discrimination claims”.

While it is correct that petitions to the national anti-discrimination committee have been decided in favour of GENDERDOC-M, they have not been executed by those responsible and thus GENDERDOC-M has obtained no remedy.

Moreover the attempt in May 2013 by the Mayor of Chisinau to use court proceedings to frustrate GENDERDOC-M’s exercise of the right to freedom of assembly has not been resolved satisfactorily, and is now the subject of an application to the European Court of Human Rights. This case was described at length in the Appendix to our 2014 submission to the Committee of Ministers, under the heading “A description of the events surrounding the 2013 IDAHO demonstration”.

## **3. GENERAL MEASURES**

3.1 We recognise the merits of the freedom of assembly legislation implemented in Moldova in recent years. Nonetheless we consider that further general measures are needed. In particular, GENDERDOC-M’s experiences demonstrate the need for the training of law enforcement officials with regard to their obligation to treat all members of society without discrimination (including specifically LGBTI persons), particularly in relation to the

enjoyment of the right to freedom of assembly, and to the need to investigate all individuals and organisations engaged in threatened or actual violence against such events, with a view to prosecution.

21 August 2015