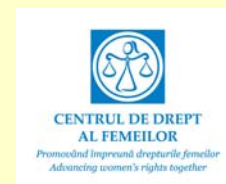




# Implementation of the Republic of Moldova's Domestic Violence Legislation

## A Human Rights Report





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# Implementation of the Republic of Moldova's Domestic Violence Legislation A Human Rights Report

The Advocates for Human Rights  
Bulgarian Gender Research Foundation  
Women's Law Center

The Advocates for Human Rights  
Minneapolis



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**This report is dedicated to the women of the Republic of Moldova.**



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## EXECUTIVE SUMMARY

In February of 2011, ...[the man] punched her face and took a mop and hit her on the back several times. She ran away from him and he followed her. He hit her twice with his fists, then pressed her head and face into the bed. He scratched her face and slammed her head and body into the wall. The violence took place over the course of several hours.... She ran away to her sister's house...He came to the sister's house and spit on her, swore at her, and threatened her. He pushed their daughter, who tried to separate them. The victim went to the local police. The police referred them to a forensic doctor...the injuries [bruises on the arm, face, and chin] were classified as injuries that do not damage the health of the individual. The next day the police put together an administrative record for her case. The administrative court sanctioned him with an administrative fine - 500 lei [40USD]...he paid the fine and remained at home.<sup>1</sup>

Domestic violence or violence directed against women by intimate partners, including a current or former spouses or boyfriends, is a devastating problem throughout the world.<sup>2</sup> Domestic violence violates fundamental human rights to safety and security and the rights to be free of torture and violence. The effects of domestic violence go far beyond physical injuries and long-lasting psychological wounds. Domestic violence affects a victim's health, her potential to thrive, the well-being of her family, and impacts the economic health of her village and homeland. The Republic of Moldova is one of Europe's poorest nations, requiring the full participation of all of its citizens to overcome severe economic challenges. Domestic violence is a substantial barrier to achievement of personal security, family well-being, economic prosperity, and the development of the nation.

A 2011 study found that 63.4% of women in Moldova aged 15 or older had experienced physical, psychological, or sexual violence from an intimate partner over their lifetimes.<sup>3</sup> In a report to the United Nations in 2011, the government of the Republic of Moldova recognized the pervasive problem of domestic violence and indicated a commitment to strengthening its response.<sup>4</sup> The government has extended its National Referral System and national shelter for victims of trafficking to victims of domestic violence due to the strong link between trafficking and domestic violence.<sup>5</sup>

A civil law providing for protective orders was adopted by the Parliament of the Republic of Moldova in 2007 and took effect in 2008. This law, the Law on Preventing and Combating Family Violence (Law 45),<sup>6</sup> provided an excellent foundation for increasing access to justice and safety for domestic violence victims. However, due to the lack of specific directives on requesting, issuing, and extending protective orders, Law 45 was rarely implemented in its early years.<sup>7</sup> In July of 2010, the necessary directives were

<sup>1</sup> Interview with Lawyer, City D, 16 November 2011.

<sup>2</sup> This report also addresses violence against minors by family members as defined in Law 45 Chapter 1 Article 2.

<sup>3</sup> National Bureau of Statistics of the Republic of Moldova, in collaboration with the United Nations Development Program, UN Women, and the United Nations Population Fund, *Violence against Women in the Family in the Republic of Moldova* (2011).

<sup>4</sup> *Report of the Working Group on the Universal Periodic Review: Republic of Moldova*, U.N. Human Rights Council, 19th Sess., U.N. Doc. A/HRC/19/18 (14 Dec. 2011), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/173/94/PDF/G1117394.pdf?OpenElement>.

<sup>5</sup> International Organization for Migration, *Second Annual Report on Victims of Trafficking in South-Eastern Europe. Country Report on the Republic of Moldova* (2005) p. 348; Mann, *Dead Letter Law: Domestic Violence and Trafficking in Moldova* (2007) p. 6.

<sup>6</sup> Law to Prevent and Combat Family Violence, Law No. 45 of 1 March 2007, No. 178, Official Monitor No. 55-56, 18 March 2008. (Hereafter Law 45.) See Appendix A for complete text of Law 45.

<sup>7</sup> Manole, *Discriminatory Ill-treatment of Women in Moldova*, sec. 2.2.1.1, *The Equal Rights Review*, Vol. Six (2011).

established in Law 167.<sup>8</sup> In addition, a new Criminal Code provision, Article 201<sup>1</sup>, was adopted, making domestic violence of any level a crime. With this legislation, Moldova became one of the first countries in the region to address domestic violence with specific legislation in both the civil and criminal systems. Notably, it is also one of the first to include comprehensive provisions for a multi-sectoral response in its law. The authors commend the Republic of Moldova for enacting these legislative reforms.

In 2011, the Women's Law Center, The Advocates for Human Rights, and the Bulgarian Gender Research Foundation conducted fact-finding in Moldova to monitor all aspects of the implementation of domestic violence legislation. The authors conducted 68 interviews<sup>9</sup> throughout nine cities and rayons<sup>10</sup> with police, prosecutors, judges, government ministry officials, non-governmental organizations (NGOs), shelters, maternal centers,<sup>11</sup> victims, child protection services employees, United Nations organizations, prison officials, academics, journalists, health care professionals, and lawyers.<sup>12</sup> The findings and recommendations presented in this report reflect these interviews, the authors' analysis and observations, and secondary research.

Interviews revealed that many victims are not able to access the protective order remedy envisioned by Law 45. In fact, only approximately 600 protective orders have been issued since Law 45 was first implemented in 2010, a low number considering the reported rates of domestic violence in Moldova, a country with more than three and one-half million people.<sup>13</sup> However, Ministry of Internal Affairs statistics from January - August 2012 show a substantial increase recently: more protective orders were issued during the first eight months of 2012 than in all of 2011.<sup>14</sup>

While Law 45 is a step forward, it requires urgent reform to eliminate barriers to justice, ensure victim safety, and provide accountability for offenders. Law 45 does not provide for a dedicated source of funding for shelters and victim services. There are few shelters in Moldova. The NGOs and maternal centers which provide crucial services to victims must strive each year to raise sufficient funds from inadequate governmental support and private donations. The Republic of Moldova has benefited from the support of many international donors such as the United Nations Population Fund, the United Nations Children's Fund, the Organization for Security and Co-operation in Europe, the International Organization for Migration, and others, but services for victims remain seriously underdeveloped and under-funded.

Other important barriers exist. Law 45 limits criminalization of violations of protective orders to only those that occur subsequent to a first offense.<sup>15</sup> Victims are exposed to substantial risk of future harm if

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<sup>8</sup> The passage of Law 167 took almost two years. Email from Women's Law Center, 27 September 2007, on file with authors. See Appendix B for complete text of Law 167.

<sup>9</sup> The number of interviews conducted (68) reflects the number of actual sittings for an interview and not the actual number of interviewees. The number of interviewees is substantially higher than the number of interviews.

<sup>10</sup> A rayon is an administrative term for a district that may include a city and a number of villages.

<sup>11</sup> Maternal centers are social assistance agencies found in larger cities throughout Moldova, originally founded to give young mothers a place to go so that they did not feel that they had to abandon their children, and later broadened to include providing services to victims of human trafficking and domestic violence victims. Maternal centers provide medical and psychological assistance, shelter, food, social reintegration counseling, and job training for mothers with young children. Interview with Shelter, City D, 4 November 2011; Interview with Maternal Center, City E, 18 November 2011; Interview with Maternal Center, City B, 14 November 2011.

<sup>12</sup> The names of cities and cities/rayons have been omitted to protect confidentiality except for public figure interviewees.

<sup>13</sup> Statistics from the Ministry of Internal Affairs, November 2011, July 2012, and August 2012. Statistics are through August 2012.

<sup>14</sup> From January through August, 2012, a total of 286 protective orders were issued. By contrast, in all of 2011, 284 protective orders were issued. Statistics from the Ministry of Internal Affairs, November 2011, July 2012, and August 2012.

<sup>15</sup> Law 45 states that violations of protective orders are to be handled under "applicable legislation" referring to Article 318 of the Contravention Code (formerly called the Administrative Code), which sanctions non-execution of court orders with a fine. Law 45 Chapter III Article 17. If an aggressor violates a protective order after a contravention or administrative sanction has been imposed, the second violation becomes a crime punishable by up to 2 years in

*Footnote continued on next page . . .*

aggressors are not held accountable for their first offense. In addition, Law 45 requires health professionals to report all cases of domestic violence to police.<sup>16</sup> Social service professionals often report violence without victim permission as well. Notification provisions and policies that ignore the victims' own choices and decisions may expose victims to further harm from violent aggressors and deter women from seeking medical or social assistance before they are ready to seek a legal remedy.

When victims seek assistance from police, they face additional barriers to safety and justice. Police are often insensitive to victims and dismiss acts of violence that result in low-level injuries. Police do not hold aggressors accountable to follow the terms of protective orders or sanction them when those terms are violated. Although police are beginning to initiate more criminal cases,<sup>17</sup> many domestic violence crimes are not investigated or pursued. Contrary to the criminal law, police often require repeated incidences of violence before they will apply Article 201<sup>1</sup>, the criminal law that addresses all forms of domestic violence irrespective of the degree of injury.<sup>18</sup> Because police pursue domestic violence cases as administrative offenses,<sup>19</sup> aggressors are rarely arrested or detained. They are often sanctioned only with a fine, to the distress of the victim and family. In fact, the fear of a financial penalty causes victims to refrain from seeking help.<sup>20</sup>

Prosecutors, like police, have been slow to apply Article 201<sup>1</sup> of the Criminal Code to cases of low-level injuries. They too exhibit attitudes that blame victims or minimize criminal behavior, resulting in fewer prosecutions. Prosecutors frequently refuse to pursue cases or withdraw cases when victims do not want to testify, even in the most severe cases. In addition, both prosecutors and judges use dangerous "settlement" techniques when determining a victim's willingness to reconcile under Criminal Code Article 276(5).<sup>21</sup>

Domestic violence victims' access to justice is impeded by the judiciary as well. Judicial bias against victims presents a substantial barrier to the protective order relief envisioned by Law 45. Many judges do not issue protective orders because of a common misperception that victims are lying to obtain benefits such as property or child custody. Additionally, victims in shelters or in the process of divorce are often denied protective orders because judges mistakenly think protection is not necessary. Judges frequently do not issue protective orders within the required 24-hour time frame. They do not order precise protective measures with specific distances and locations, making victims less secure and enabling aggressors to test the limits of the order. Finally, the immediacy and effectiveness of a protective order is undermined by judges who do not promptly communicate to all parties that an order has been issued.

... footnote continued from prior page

prison. Criminal Code Article 320. See Appendix A and Appendix D for full texts of Law 45 and Contravention Code Article 318, respectively. See Appendix C for full text of Criminal Code Article 320.

<sup>16</sup> Law 45 Chapter II Article 8(5)b.

<sup>17</sup> Statistics from the Ministry of Internal Affairs, July 2012, on file with authors, indicate that from January-June 2012, 479 cases of domestic violence were registered. Importantly, a criminal procedure was initiated in 327 of the 479 cases- a 70% improvement over a similar period of time in 2011, when only 190 cases of domestic violence were initiated under Criminal Code Article 201<sup>1</sup>.

<sup>18</sup> Criminal Code Article 201<sup>1</sup>. Family Violence. (1) "Family violence, meaning deliberate action or inaction, manifested physically or verbally, committed by a family member against another family member, which provoked physical suffering following minor bodily or health injuries, mental suffering or material or moral damage shall be punished with unpaid labor for the benefit of the community from 150 to 180 hours or with up to 2 years imprisonment. (2) The same deed: a) committed against two or more family members; b) which provoked bodily or health injuries of medium gravity; shall be punished with unpaid labor for the benefit of the community from 180 to 240 hours or with up to 5 years imprisonment. (3) The same deed, which: a) has caused grave bodily or health injuries; b) has determined a person to commit suicide or suicide attempt; c) has caused the victim's death; shall be punished with imprisonment from 5-15 years;" Interview with Police, City F, 17 November 2011; Interview with Police, City D, 11 November 2011; Interview with Police, City I, 18 November 2011; Interview with Police, City B, 14 November 2011.

<sup>19</sup> Interview with Police, City D, 11 November 2011; Interview with Police, City I, 18 November 2011.

<sup>20</sup> La Strada, *Trust Line for Women Activity Report* (2012), p. 11.

<sup>21</sup> See Appendix C for full text of Article 276.

Best practices from the international community indicate that a coordinated response among agencies is the most effective way to address domestic violence victims' needs. The government of Moldova has taken important steps toward implementing Law 45's comprehensive provisions on a multi-sectoral response. Multi-disciplinary teams in many locations are providing individualized and supportive responses to victims of domestic violence. For victims to receive the full protection guaranteed by the law, however, improvements are necessary. Many maternal centers and social assistants infrequently utilize the protective order remedy to promote victim safety.<sup>22</sup> In addition, they lack knowledge of the dynamics of domestic violence, safety planning, and the special needs of juvenile victims, and they may pressure a victim to notify the police when she comes for assistance.

Health care professionals lack knowledge on an effective medical response to domestic violence that incorporates the special needs of victims. Many physicians are not aware of domestic violence cases in their practice, do not know how to identify them, and do not know how to respond to victims. Uninformed doctors will not compile an adequate medical report to support a victim's case, which may result in the denial of a protective remedy in the short term, and, in the long term, may substantially increase the risk of further harm to the victim. In addition, the forensic doctors' lack of knowledge about Law 45 and Criminal Code Article 201<sup>1</sup> impedes effective implementation of these laws. Furthermore, the forensic classification system categorizes injuries as less severe than they should be in light of current knowledge of domestic violence risk assessment and escalation of violence.

Although child protection specialists at the rayon level operate in the Social Assistance and Family Protection Departments throughout Moldova, few protective orders under Law 45 have been issued on behalf of children. In addition, safe sites for supervised visitation are needed to prevent further abuse by perpetrators in cases of domestic violence.

In conclusion, while the government of Moldova has taken important steps to combat domestic violence, monitoring revealed that there is an urgent need for reform of legal provisions, additional resources for shelters and services for victims, and multi-sector training. These points are addressed in more detail in the Recommendations section on page 57. The government should urgently address the priority recommendations. The authors commend the state, the many legal actors, the members of the multi-disciplinary teams, maternal centers, and NGOs for their efforts to date, and urge the government of the Republic of Moldova to execute the recommendations presented in this report to continue this vital work.

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<sup>22</sup> Interview with Maternal Center, City C, 16 November 2011; Interview with Multi-disciplinary Team, City E, 18 November 2011; Interview with Maternal Center, City A, 15 November 2011.

## INTRODUCTION

The Republic of Moldova's membership in the United Nations<sup>23</sup> obligates it to protect the human rights of the people living within its borders. As a member of the international community, Moldova must safeguard those rights set forth in the Universal Declaration of Human Rights and the Declaration on the Elimination of Violence against Women. Moreover, Moldova has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>24</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>25</sup> and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),<sup>26</sup> and is bound by their provisions. Moldova is also a party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR)<sup>27</sup> and the Convention on the Rights of the Child (CRC).<sup>28</sup>

In 1995, the Republic of Moldova became a full member of the Council of Europe and is a party to many European human rights treaties, including the European Convention on Human Rights and Fundamental Freedoms,<sup>29</sup> the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,<sup>30</sup> the European Convention on Action against Trafficking in Human Beings,<sup>31</sup> and the European Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.<sup>32</sup> In 2011, the Council of Europe adopted the Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention).<sup>33</sup> However, to date, Moldova has neither signed nor ratified this treaty.

The international standards set forth in these instruments condemn domestic violence and place an affirmative obligation on member states to prevent and protect women from violence, punish perpetrators,

<sup>23</sup> Moldova joined the United Nations on 2 March 1992, [http://www.un.md/country\\_prof/](http://www.un.md/country_prof/).

<sup>24</sup> Moldova acceded to CEDAW on 1 July 1994, and the Optional Protocol to CEDAW on 28 February 2006, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en).

<sup>25</sup> Moldova acceded to the ICCPR on 26 January 1993, and ratified the Optional Protocol to the ICCPR on 23 January 2008,

[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en).

<sup>26</sup> Moldova acceded to the CAT on 28 November 1995, and ratified the Optional Protocol to the CAT on 24 July 2006, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en).

<sup>27</sup> Moldova acceded to the ICESCR on 26 January 1993,

[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en).

<sup>28</sup> Moldova acceded to the CRC on 26 January 1993, and ratified the Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography on 12 April 2007, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en). Moldova is also a party to two treaties governing international child custody and child abduction: the Hague Convention on the Civil Aspects of International Child Abduction (entered into force on July 1st 1998,

[http://www.hcch.net/index\\_en.php?act=conventions.status&cid=24](http://www.hcch.net/index_en.php?act=conventions.status&cid=24)) and the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children, which entered into force on May 1<sup>st</sup>, 1998,

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=105&CM=3&DF=10/08/2012&CL=ENG>.

<sup>29</sup> The Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms entered into force in Moldova on 12 Sept, 1997,

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=3&DF=10/08/2012&CL=ENG>.

<sup>30</sup> The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment entered into force in Moldova on 1 February 1998,

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=126&CM=3&DF=10/08/2012&CL=ENG>.

<sup>31</sup> The Council of Europe Convention on Action against Trafficking in Human Beings entered into force in Moldova on 1 February 2008,

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=3&DF=10/08/2012&CL=ENG>.

<sup>32</sup> The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse entered into force in Moldova on 1 July, 2012,

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=201&CM=3&DF=10/08/2012&CL=ENG>.

<sup>33</sup> <http://conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>.



and compensate victims of violence. To this end, states must develop penal, civil, labor, and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Effective implementation of these standards is crucial to ensuring states meet their due diligence obligations to protect women's human rights.

In March 2007, the Moldovan government took an important step forward in recognizing its international obligations and addressing domestic violence by adopting the Law on Preventing and Combating Family Violence (Law 45), which entered into force September 18, 2008.<sup>34</sup> The law states: "preventing and combating family violence is part of the national policy for the protection and support of the family and represents an important public health issue."<sup>35</sup> Furthermore, the purpose of the law is to "strengthen, protect and support the family and to ensure the observance of fundamental legislative principles regarding the family and the equality of opportunities between women and men regarding their human right to a violence-free life."<sup>36</sup>

Law 45 defines family violence as "any deliberate action or inaction, except actions taken in self-defense or in defense of other persons, whether physical or verbal, that is manifested through physical, sexual, psychological, spiritual or economic abuse or by causing material or moral damage, committed by a family member against other family members, including against minors, or against common or personal property."<sup>37</sup> In addition to including broad forms of violence, Law 45 extends protection to domestic partners not in a formal marriage; however, protection is not extended to non-cohabitating current or former dating partners.<sup>38</sup>

Law 45 provides for the right to request a protection order and extends the right to report cases of domestic violence to any person who knows about any such cases. Law 45 provides for 10 protective measures a victim may seek against the aggressor: 1) obliging the aggressor to temporarily leave the shared residence or the residence of the victim, without the right to decide ownership issues; 2) requiring the aggressor to stay away from the victim; 3) requiring the aggressor to not contact the victim, the victim's children, or other dependents; 4) prohibiting the aggressor from visiting the victims' work or residence; 5) requiring the aggressor to provide child support; 6) requiring the aggressor to cover costs and damages, including medical expenses, resulting from the violence; 7) restricting the unilateral disposal of common assets; 8) requiring the aggressor to participate in a treatment or counseling program; 9) establishing a temporary visitation schedule for the aggressor's minor children; and 10) prohibiting the aggressor from keeping or handling firearms.<sup>39</sup> The courts are required to issue protective orders within 24 hours. The orders are effective for a maximum of three months and may be extended under certain circumstances. The aggressor is given a copy of the order at the hearing, or the police notify the aggressor of the order if the aggressor is not present.

Initial implementation efforts of Law 45 were hampered by lack of implementation procedures under civil or criminal legislation in order to issue and enforce protective measures, as well as an overall lack of awareness of the law. As a result, the first protective order was not issued until September 2009.

Much needed amendments were made to the national legal framework in July 2010, including creating new procedures in the Civil and Criminal Procedure Codes to enable effective application and enforcement of protective orders. The Moldovan Criminal Code was also amended, newly criminalizing, through Article 201<sup>1</sup>, all forms of domestic violence, including economic, psychological, and physical violence, irrespective of the degree of injuries.<sup>40</sup> During the course of a domestic violence criminal trial,

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<sup>34</sup> See Appendix A for complete text of Law 45.

<sup>35</sup> Law 45 Preamble.

<sup>36</sup> Law 45 Preamble.

<sup>37</sup> Law 45 Chapter I Article 2.

<sup>38</sup> Law 45 Chapter I Article 3.

<sup>39</sup> Law 45 Chapter III Article 15(1).

<sup>40</sup> Criminal Code, Article 201<sup>1</sup>. See Appendix C.

victims may request protective measures that are separate from but similar to the measures listed in the civil protective order provisions of Law 45.<sup>41</sup>

The National Referral System (NRS), initially created in 2006 for the protection and assistance of victims of trafficking, was later extended to cover domestic violence victims, who are seen as potential victims of trafficking. The NRS is a country-wide system of coordinated partnerships of local and national public authorities, civil society organizations, and multi-disciplinary teams of individual police, social assistants, teachers, and health care professionals in villages and rayons. The purpose of the NRS is to provide coordinated support and assist victims or potential victims of trafficking, including domestic violence victims.

Common instructions on implementing Law 45 that would be binding on the Ministry of Labour, Social Protection and Family, the Ministry of Health, and the Ministry of Internal Affairs were drafted. After two years of review, however, agreement on the common instructions could not be achieved, and it was determined that each ministry would create its own instructions to implement Law 45. The Ministry of Labour, Social Protection and Family and the Ministry of Health released instructions in February of 2012. The Ministry of Internal Affairs issued instructions in August of 2012.

While there have been significant changes in Moldova's legal framework to protect victims and hold offenders accountable, these tools are being used with limited frequency. Currently, there are still very few protective orders issued throughout Moldova. Numbers are increasing, but interviews indicated that many victims of domestic violence remain unprotected. Furthermore, there are delays in the issuance of protective orders beyond the 24-hour requirement under the law.

Research also revealed problems with interpretation of the laws, indicating an urgent need for instructions and clarification. Despite the language of the law criminalizing all forms of domestic violence, including acts that result in light injuries, domestic violence cases are regularly pursued as administrative offenses resulting in a lack of criminal accountability for aggressors and continued vulnerability for victims. Furthermore, criminal prosecutions of domestic violence are heavily dependent on victim participation and are routinely dropped if the victim does not participate in the prosecution.

Insufficient funding and support is another barrier to effective implementation of legal and policy reforms. There is currently no dedicated or sustained source of funding for victim services, and NGOs struggle each year to provide crucial services to victims. Continued training and instruction at all levels of response are also necessary.

To monitor the implementation of these laws and policies and document challenges such as those described above, the Women's Law Center, The Advocates for Human Rights, and the Bulgarian Gender Research Foundation carried out fact-finding in Moldova in 2011 and 2012. The authors conducted 68 interviews in cities and rayons throughout Moldova with police, prosecutors, judges, government ministry officials, non-governmental organizations (NGOs), shelters, maternal centers, victims, child protection services employees, United Nations organizations, prison officials, academics, journalists, health care professionals, and lawyers. This report presents the findings informed by these interviews, the authors' analysis and observations, and secondary research. The report also makes recommendations based on international human rights standards, with special focus on promoting victim safety and offender accountability.

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<sup>41</sup> Criminal Procedure Code Article 215<sup>1</sup>. See Appendix C.





## POLICE

Police generally play a major role in ensuring access to justice for victims of domestic violence. Victims often turn to police first for assistance.<sup>42</sup> Importantly, police in Moldova are increasingly using the protective order remedy in domestic violence cases. While Law 45 authorizes various parties to initiate protective order applications,<sup>43</sup> police are the most frequent applicants. In the first 10 months of 2011, police initiated 173 of the 222 protective orders issued country-wide during that time.<sup>44</sup> And, for the first six months of 2012, police initiated 163 of 229 protective orders that were issued during the six months.<sup>45</sup> Yet, the total number of protective orders issued - only approximately 593 since the application provisions for Law 45<sup>46</sup> passed in the fall of 2010 - is a very small number for Moldova's population of 3,545,000.<sup>47</sup> Despite the increase in police applications for protective orders, many victims are still not receiving protection.<sup>48</sup> For example, there were 1,715 cases of domestic violence reported to police in Chisinau during the first 10 months of 2011 and only 34 requests for protective orders issued by police.<sup>49</sup> Interviewees agreed that in order to effectively implement the laws on domestic violence, the police need a clearer sense of their responsibilities, more specific guidelines, and training on best practices to support victim safety and offender accountability.<sup>50</sup>

Despite increased police use of Law 45, interviews revealed attitudes and practices that jeopardize the safety of domestic violence victims and allow aggressors to escape accountability for their use of violence. Interviews revealed a pattern of police blaming the victim, ignoring or being dismissive of domestic violence claims, and engaging in policies and practices that expose victims to additional risk of violence, such as issuing warnings to aggressors. While there were some examples of effective enforcement of protective orders, interviewees reported that many protective orders are not enforced effectively. In addition, notwithstanding efforts to increase prosecutions of domestic violence cases, police continue to pursue such cases as administrative claims as opposed to criminal cases under Article 201<sup>1</sup>. As a result, even cases of severe injury have escaped police investigation and review by prosecutors, and thus avoided any criminal sanctions.

### ATTITUDES OF POLICE

Interviews revealed a pattern of police ignoring or being dismissive of domestic violence claims.<sup>51</sup> An ombudsman stated, "In a majority of complaints about domestic violence the police...don't respond to domestic violence cases."<sup>52</sup> A victim from a small village described her experiences:

My understanding was that the police didn't want to interfere with the relations between husband and wife. They said, "He is only threatening you, these are only words," when actually he was chasing me

<sup>42</sup> United Nations Population Fund, [Violence against Women in the Family in the Republic of Moldova](#) (2012).

<sup>43</sup> Law 45 Chapter III Article 12. However, applications for civil protective orders should be submitted only with a victim's consent, except in the case of minor victims or victims who are especially vulnerable, such as mentally or physically challenged victims.

<sup>44</sup> Interview with Ministry of Internal Affairs, Chisinau, 9 November 2011.

<sup>45</sup> Statistics from the Ministry of Internal Affairs, July 2012, on file with authors.

<sup>46</sup> See Civil Procedure Law Chapter XXX<sup>1</sup> in Appendix B.

<sup>47</sup> UN Statistics Division, [Social Indicators](#), June 2011; Interview with Ministry of Internal Affairs, Chisinau, 9 November 2011 and Statistics from the Ministry of Internal Affairs, August 2012, on file with authors. Statistics are through August 2012.

<sup>48</sup> Interview with Police, City D, 11 November 2011.

<sup>49</sup> Id.

<sup>50</sup> Interview with Advisor to Prime Minister, City D, 4 November 2011; Interview with Rayon Officials, City I, 18 November 2011; Interview with Ombudsman, City D, 10 November 2011. The instructions for the police were mired in political process for two years. Interview with Ministry of Labour, Social Protection and Family, Chisinau, 11 November 2011. The Ministry of Internal Affairs released guidelines for police in August 2012.

<sup>51</sup> Interview with Lawyer, City D, 8 November 2011.

<sup>52</sup> Interview with Ombudsman, City D, 10 November 2011.

with a knife in his hand...I filed three requests for a protective order at the police station to prevent the threats from coming true...The only reaction [the police had] was to call the aggressor and talk to him. Nothing changed.<sup>53</sup>

A multi-disciplinary team chief stated that the police say, “Can’t you just solve your own problems?” when victims seek help.<sup>54</sup> When a victim encounters unresponsive police, the director of an NGO stated that “The victim is scared, and when she goes to the police, they don’t explain her rights...[the victim] will think about her situation, children, past experiences where nothing was done and lack of services and just stay with [the aggressor] because she doesn’t have any options.”<sup>55</sup>

Dismissive or uninformed police attitudes often result in harmful or dangerous situations for victims. In one case, a victim was in hiding from a violent aggressor and in fear for her life. She asked the police officer for help with the application for a protective order. He told her to come to the station, and when she did, the aggressor was in the office. The police had arranged the meeting without her consent.<sup>56</sup> Police try to mediate between the parties to “settle” the case.<sup>57</sup> Police often tell the victim to accept the aggressor and convince her to withdraw her complaint because they assume that the couple will reconcile.<sup>58</sup> One NGO director described a case where the victim fled to her parent’s house with her children, and the police fined her for taking her children out of school.<sup>59</sup> In another case, a police officer gave an aggressor advance warning of a protective order application.<sup>60</sup> In response, the aggressor took all of the belongings from the house.<sup>61</sup>

Interviews revealed that police officers often blame the victim for the violence.<sup>62</sup> For example, a high-level police officer stated, “In most cases the trouble starts because very often women are not happy and start to nag husbands and this is the reason that there is domestic violence, that she is driving the husband crazy.”<sup>63</sup> “[The police] have the mentality of: what did the victim do to provoke the situation?” stated a shelter director.<sup>64</sup> A child rights specialist explained, “The local culture is ‘if she was beaten she probably deserved it’ so police sometimes do not intervene in the right way because of a culture which does not pay too much attention to victims.”<sup>65</sup> One officer described a case of repeat violence, “...when the victim provoked the violence, her husband beat her with a stick.”<sup>66</sup> Many police officers consider domestic violence to be the result of poverty, alcoholism,<sup>67</sup> or migration.<sup>68</sup> Also, police are frustrated by the fact that

<sup>53</sup> Interview with Victim, City G, 15 November 2011.

<sup>54</sup> Interview with Multi-disciplinary Team, City I, 18 November 2011.

<sup>55</sup> Interview with NGO, City D, 8 November 2011.

<sup>56</sup> Interview with Shelter, City D, 7 November 2011.

<sup>57</sup> Interview with Ombudsman, City D, 10 November 2011. The ombudsman also mediated in a case of domestic violence. Id.

<sup>58</sup> Interview with NGO, City D, 8 November 2011.

<sup>59</sup> Id.

<sup>60</sup> Interview with Shelter, City D, 7 November 2011.

<sup>61</sup> Id.

<sup>62</sup> Interview with NGO, City D, 8 November 2011.

<sup>63</sup> Interview with Police, City D, 11 November 2011.

<sup>64</sup> Interview with Shelter, City D, 7 November 2011.

<sup>65</sup> Interview with Rayon Child Protection Specialist, City B, 14 November 2011.

<sup>66</sup> Interview with Multi-disciplinary Team, City G, 15 November 2011. She suffered light injuries and the husband received an administrative fine of 500 lei (40USD).

<sup>67</sup> Interview with Ministry of Internal Affairs, Chisinau, 9 November 2011; Interview with Police, City I, 18 November 2011; Interview with Police, City B, 14 November 2011. A prevailing myth about domestic violence is that alcohol and drugs are the major causes of domestic abuse. In reality, some abusers rely on substance use (and abuse) as an excuse for becoming violent. Alcohol allows the abuser to justify his abusive behavior as a result of the alcohol. While an abuser’s use of alcohol may have an effect on the severity of the abuse or the ease with which the abuser can justify his actions, an abuser does not become violent “because” drinking causes him to lose control of his temper...domestic violence is used to exert power and control over another; it does not represent a loss of control. The Advocates for Human Rights “[Myths about Alcohol and Domestic Violence](http://www.stopvaw.org/myths_about_alcohol_and_domestic_violence),” 5 March 2012, [http://www.stopvaw.org/myths\\_about\\_alcohol\\_and\\_domestic\\_violence](http://www.stopvaw.org/myths_about_alcohol_and_domestic_violence).

victims and aggressors often reconcile, after having spent time on paperwork that appears to them to have been in vain.<sup>69</sup>

Interviews also revealed that some police think that a victim will use a complaint of domestic violence to gain physical possession of the home or an advantageous property settlement in a divorce.<sup>70</sup> A high-level officer in a major urban area said, "...most often when the so-called victim applies herself for a protective order in court, this usually happens when there are hostile relations between the husband and wife and in divorce proceedings and women want to take advantage of the situation..."<sup>71</sup>

Interviews revealed that some police did not prioritize domestic violence cases and "...may make a call to say 'behave yourself' and then visit to get a report later," stated a child rights specialist.<sup>72</sup> A lawyer who often helps victims obtain protective orders stated that the attitude of police toward an aggressor's property rights has been a persistent barrier to implementation of protective orders.<sup>73</sup> She said, "The biggest difficulty is to explain to the police the principle that life has priority over assets and everything else, because the police would always say, how can they kick out an owner?...They say the person worked all his life to have that property...This happens very often..."<sup>74</sup> Police interviewees in one rayon confirmed that they haven't had a case where the aggressor was removed from the house because "we need to provide them with a place and we don't have a place for them to go."<sup>75</sup> Interviews also revealed that some police think that the protective order is useless because "it serves no purpose to keep a person on the street for 3 months."<sup>76</sup> A prosecutor responded to this attitude: "I am sorry that they think of the security of the perpetrator rather than the security and well-being of the victims."<sup>77</sup>

If a victim is from another rayon, police may not view protecting her as their responsibility. For example, a village multi-disciplinary team chief described a case:

[The victim] went to the sector police and complained about the behavior of her partner who...beat her and was mean to the children. Their answer? 'Don't come to me, you are not a resident of this village.' This is a big issue... She is from another region, born in one place, residence visa in another rayon, and lives here.<sup>78</sup>

## TRAINING FOR POLICE

Interviewees identified the need for police at all levels to receive further training to effectively respond to domestic violence. High-level police officials acknowledged that police "can have a more reluctant attitude toward cases because they do not have enough skills and knowledge."<sup>79</sup> Interviews revealed that many officers have received at least one training. In one large urban area, they had trainings before Law 45

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<sup>68</sup> Interview with Police, City F, 17 November 2011; Interview with Police, City B, 14 November 2011; Interview with Police, City I, 18 November 2011.

<sup>69</sup> Interview with Ombudsman, City D, 10 November 2011; Interview with Shelter, City D, 4 November 2011.

<sup>70</sup> Interview with Police, City D, 11 November 2011. See also La Strada, [Trust Line for Women Activity Report](#) (2012) p. 44-45.

<sup>71</sup> Interview with Police, City D, 11 November 2011. When victims separate from abusers, violence often escalates. Victims' fears are well-founded and police should act to protect them. Tennessee Coalition Against Domestic and Sexual Violence. [Tennessee Domestic Abuse Benchmark](#), § 1-3.04 (2009).

<sup>72</sup> Interview with Rayon Child Protection Specialist, City B, 14 November 2011.

<sup>73</sup> Interview with Lawyer, City D, 25 April 2012.

<sup>74</sup> Id. See, e.g., Interview with Police, City D, 11 November 2011; Interview with Police, City I, 18 November 2011.

Law 45 Article 15(1)a states that the protective order can "Oblige the aggressor temporarily to leave the joint dwelling or to keep away from the victim's dwelling, **without making any determination as to ownership or property or assets.**" (Emphasis added).

<sup>75</sup> Interview with Police, City I, 18 November 2011.

<sup>76</sup> Interview with Police, City D, 11 November 2011.

<sup>77</sup> Interview with Prosecutor, City C, 16 November 2011.

<sup>78</sup> Interview with Multi-disciplinary Team, City F, 16 November 2011.

<sup>79</sup> Interview with Ministry of Internal Affairs, Chisinau, 9 November 2011.

was adopted, and after it passed they had seminars on its implementation and how to cooperate with all sectors involved.<sup>80</sup> Trainings have also occurred with local police in the rayons.<sup>81</sup>

One interviewee noted that many police were recently hired, so training must be repeated on a regular basis.<sup>82</sup> Officials at the Ministry of Internal Affairs admitted that "...there is very high staff turnover...the gaps are felt in the skills and experience of the staff. If there is a certain procedure the staff may not always follow it and must be self-motivated to follow it."<sup>83</sup> Police differ in their understanding of Law 45. For example, police opinion varies on what is required to obtain an extension of a protective order. Some say another act of violence is needed, and others say that a fear of violence is enough.<sup>84</sup> Requiring another act of violence for an extension of a protective order puts victims at risk of serious harm.

## POLICE IMPLEMENTATION OF LAW 45

Interviewees reported some examples of effective police implementation and enforcement of civil protective orders under Law 45. Upon receipt of a protective order, a police officer in one rayon ensured that the aggressor had left the house and warned him that during the 90 days of the protective order, he may not go to the house or approach the family.<sup>85</sup> In a large urban area, police stated that the victim is informed that if the aggressor does not respect the measures in the order, she should contact the police.<sup>86</sup> In another rayon, the police initiated a discussion of a cooperation agreement with a maternal center in cases of domestic violence crimes.<sup>87</sup> Also, the chief of a multi-disciplinary team revealed that police have been referring many more cases of domestic violence to the team and had even hired a female staff member to meet with victims to better relate to the unique needs and fears of domestic violence victims.<sup>88</sup>

Despite these positive reports, however, interviews revealed that many protective orders are not effectively enforced. A lawyer said "...when it comes to implementation of the order we have difficulties with the police. We have to push them to execute it..."<sup>89</sup> "A high-ranking police official acknowledged that "the biggest problem is the implementation of the [protective] order."<sup>90</sup> A discussion of implementation and enforcement, however, must include a realistic assessment of police resources: interviews revealed that there may be up to 1,500-3,000 citizens per officer and the officer may have to cover 40 km.<sup>91</sup> A police officer responsible for two villages may have to make house calls on hundreds of people and he might not have a car.<sup>92</sup> Ministry officials explained: "Usually police are in mayors' offices. They have no separate offices, they have to share with other municipality staff, sometimes they lack transport for their needs. Office equipment lacks computers and the opportunity to access databases."<sup>93</sup>

In addition, though police are increasingly requesting protective orders for victims, at the time interviews were conducted, there were no standard forms for protective order applications.<sup>94</sup> There is also no

<sup>80</sup> Interview with Police, City D, 11 November 2011.

<sup>81</sup> Interview with Former Police Chief, City D, 9 November 2011.

<sup>82</sup> Id.

<sup>83</sup> Interview with Ministry of Internal Affairs, Chisinau, 9 November 2011.

<sup>84</sup> Interview with Police, City D, 11 November 2011. Article 318<sup>5</sup> (1) states that the duration of protective measures may be extended as a result of the committal of acts of family violence or as a result of the nonobservance of the conditions established in the protective ordinance. See Appendix A for complete text of Article 318<sup>5</sup>.

<sup>85</sup> Interview with Police, City F, 17 November 2011.

<sup>86</sup> Interview with Police, City D, 11 November 2011.

<sup>87</sup> Interview with Maternal Center, City A, 15 November 2011.

<sup>88</sup> Interview with Multi-disciplinary Team, City A, 15 November 2011.

<sup>89</sup> Interview with Lawyer, City D, 9 November 2011.

<sup>90</sup> Interview with Ministry of Internal Affairs, Chisinau, 24 April 2012.

<sup>91</sup> Id.

<sup>92</sup> Interview with Shelter, City D, 4 November 2011.

<sup>93</sup> Interview with Ministry of Internal Affairs, Chisinau, 9 November 2011.

<sup>94</sup> Interview with Police, City D, 11 November 2011. The Ministry of Internal Affairs released guidelines for police in August 2012. The guidelines contain forms related to protective order applications. Due to the timing of their release, *Footnote continued on next page . . .*

established protocol for a victim to review the measures and help decide which will work best to protect her and her family. Victim input regarding the measures they request is important because victims are often in the best position to evaluate the risk presented by aggressors. A lack of standardized, effective forms and protocol limits victims' access to protective remedies and leaves them more vulnerable to violence.

### Duty to Make a Report

Although Law 45 requires police to “record and report” all cases of domestic violence,<sup>95</sup> high-level police in a large urban area explained their contrary view that police officers are not allowed to make a report without the victim's consent.<sup>96</sup> Interviews also revealed many instances where victims went to report but “...the police would tell them to reconcile and not make a big fuss.”<sup>97</sup> Not surprisingly, a maternal center employee noted that many victims lack confidence in the police.<sup>98</sup>

When police do not register or make a report about a domestic violence claim, there is no record of that violence. This data is important in determining risk to victims, in evidence for civil protective order applications under Law 45, or as evidence in a criminal prosecution under Criminal Code Article 201. A prosecutor noted the importance of maintaining evidence of low-level assaults because repeated acts influence the level of punishment.<sup>99</sup> He added that evidence of repeated assaults is “more convincing to judges.”<sup>100</sup> According to Law 45, police must keep a file on all families with a history of domestic violence.<sup>101</sup> This enables them to develop a profile of the aggressor, and “even if no administrative fine is issued...the aggressor is warned and his behavior will be monitored.”<sup>102</sup> A shelter director stated, “The complaints made to police tend to disappear.”<sup>103</sup> This is not always the case. For example, police in a major urban area said that they register all cases, administrative or criminal, even if the couple makes up, realizing that they may be useful in the future.<sup>104</sup> This is crucial, as an ombudsman noted: it is important that police understand that a domestic violence victim is vulnerable to more serious crime over time.<sup>105</sup>

### Psychological Violence Used Against Victims

Interviews revealed that aggressors sometimes accuse a victim of psychological violence<sup>106</sup> in response to the victim's claim of physical abuse. A shelter director reported, “A very common case is the woman goes to the police to lodge a complaint that she was beaten by her husband. He lodges his own complaint that she cursed him.” In these cases, she noted, the police fine both the victim and the aggressor.<sup>107</sup> In one case, a victim was beaten by the aggressor when she went back home to retrieve some of her things after being in a shelter. The police denied her request for a protective order despite the fact that she had a forensic report. The police informed her that they had initiated an administrative case against her

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the authors were not able to evaluate the effectiveness of these forms. We are concerned that the forms do not list the measures a victim could receive. See Ministry of Internal Affairs, Methodical Guidelines on the intervention of the internal affairs bodies in preventing and combating cases of domestic violence (2012), [http://www.mpsfc.gov.md/file/documente%20interne/instructiuni\\_mai%20%281%29.pdf](http://www.mpsfc.gov.md/file/documente%20interne/instructiuni_mai%20%281%29.pdf).

<sup>95</sup> Law 45 Chapter II Article 8(6)a.

<sup>96</sup> Interview with Police, City D, 11 November 2011. Other police stated that they would register the case despite the victim's wishes. Interview with Police, City F, 17 November 2011.

<sup>97</sup> Interview with Shelter, City D, 4 November 2011; Interview with Rayon Officials, City I, 18 November 2011; Interview with Ombudsman, City D, 10 November 2011; Interview with Journalists, City D, 9 November, 2011; Interview with Maternal Center, City E, 18 November 2011.

<sup>98</sup> Interview with Maternal Center, City C, 16 November 2011.

<sup>99</sup> Interview with Prosecutor, City B, 14 November 2011.

<sup>100</sup> Id.

<sup>101</sup> Law 45 Chapter II Article 8 (6)b and I.

<sup>102</sup> Interview with Police, City D, 11 November 2011.

<sup>103</sup> Interview with Shelter, City D, 7 November 2011.

<sup>104</sup> Interview with Police, City D, 11 November 2011.

<sup>105</sup> Interview with Ombudsman, City D, 10 November 2011.

<sup>106</sup> Law 45 Chapter I Article 2 specifically includes psychological violence.

<sup>107</sup> Interview with Shelter, City D, 7 November 2011.



because she cursed the aggressor.<sup>108</sup> Similar outcomes have been noted in other countries in the region that include the general term “psychological violence” in their law’s definition of domestic violence.<sup>109</sup>

### Delay in Applying for Protective Orders

Interviews revealed that police frequently apply for a civil protective order as a last resort.<sup>110</sup> An NGO director stated that she sees many cases where police only issue an administrative fine and do not use the protective order remedy.<sup>111</sup> In one rayon, police reported only requesting “protective orders when there are really serious cases - the worst cases.”<sup>112</sup> Another rayon official noted that the first time aggressors are violent, they are simply warned that the violence is a problem. “The social assistant and the police will come and tell him about the law and that these are the consequences.”<sup>113</sup> Regrettably, this practice is formalized in the Ministry of Internal Affairs Methodical Guidelines issued in August, 2012.<sup>114</sup> Warnings are insufficient to promote victim safety.

Some police require multiple reports of violence before they will request a protective order on behalf of a victim. In one case, a man who beat his wife with his fists was registered with police the first time it happened. “Then we started monitoring it, and it happened three more times, and the last time it happened we requested a protective order.”<sup>115</sup> Another victim filed three requests for a protection order with police; all were denied despite police knowledge of numerous violent incidents, including one that caused her to be hospitalized for 10 days. “The only reaction [of the police] was to call the aggressor and talk to him. Nothing changed,” the victim said.<sup>116</sup> One night he came to her house again and chased her with a screwdriver. When she fled to a larger city, she was able to promptly obtain a protective order.<sup>117</sup> A 2011 Moldovan human rights report described the response of law enforcement agencies to domestic violence cases as frequently “delayed and inefficient.”<sup>118</sup>

Additionally, some police procedures for protective order applications do not reflect the urgency required under Law 45.<sup>119</sup> Interviews with high-level police in a major urban area revealed that in a “routine case with recurrent incidences” it takes 15 days for the police to take an application for a protective order to the court.<sup>120</sup> Only if they consider it to be an “emergency case” will the police take it to the judge within 24 hours.<sup>121</sup> One police officer in a rayon multi-disciplinary team stated that, “If the two parties do not make up, then [we] will request the protection order to stop the violence....”<sup>122</sup>

Once issued, police rarely serve protective orders promptly on the aggressor. In one case, the aggressor, a police officer himself, received the order three weeks after it was sent to the police. He had locked

<sup>108</sup> Interview with Maternal Center, City A, 15 November 2011.

<sup>109</sup> The Advocates for Human Rights, *Implementation of Croatia’s Domestic Violence Legislation* (2012), p. 22-23.

<sup>110</sup> Interview with Police, City I, 18 November 2011; Interview with NGO, City D, 8 November 2011.

<sup>111</sup> Interview with NGO, City D, 8 November 2011.

<sup>112</sup> Interview with Police, City F, 17 November 2011. They requested only 3 protective orders in the first 10 months of 2011.

<sup>113</sup> Interview with Rayon Officials, City I, 18 November 2011.

<sup>114</sup> See Ministry of Internal Affairs, Methodical Guidelines on the intervention of the internal affairs bodies in preventing and combating cases of domestic violence (2012), [http://www.mpsfc.gov.md/file/documente%20interne/instructiuni\\_mai%20%281%29.pdf](http://www.mpsfc.gov.md/file/documente%20interne/instructiuni_mai%20%281%29.pdf).

<sup>115</sup> Interview with Police, City I, 18 November 2011.

<sup>116</sup> Interview with Victim, City G, 15 November 2011.

<sup>117</sup> Id.

<sup>118</sup> The Centre for Human Rights of Moldova, *Report on the observance of human rights in the Republic of Moldova in 2010* (2011), p. 372.

<sup>119</sup> Article 14 of Law 45 requires the application or claim to be submitted to the court within one workday. Law 45 Chapter III 14(3).

<sup>120</sup> Interview with Police, City D, 11 November 2011.

<sup>121</sup> Id.

<sup>122</sup> Interview with Multi-disciplinary Team, City G, 15 November 2011.

himself in the home and opened the door only when the prosecutor threatened to call the press.<sup>123</sup> The victim could not go home during this time.<sup>124</sup> A lawyer explained, "...we have the problem that the police officers are taking forever to tell the aggressor. They have taken from two weeks to one month. I have not had a case where it happened quicker than two weeks."<sup>125</sup>

### Lack of Sufficient Sanctions for Protective Order Violations

The sanctions that are imposed for violations of protective orders are insufficient to make victims feel protected and inhibit offenders' violent behavior.<sup>126</sup> One lawyer who represents victims of domestic violence indicated that the sanctions that do exist are so inadequate it is almost as though there are no sanctions at all. "It is common that [a protective order] is violated and there is no consequence for the abuser...Pursuing consequences for violation of a court order will only happen if the victim is with a lawyer who is persistent. So in most cases, they don't get any consequences."<sup>127</sup>

Law 45 provides that violations of protective orders are "sanctioned as provided in the applicable legislation,"<sup>128</sup> meaning Article 318 of the Contravention Code.<sup>129</sup> An officer explained that the first time a person violates a protective order, police give him a warning or an administrative punishment under this code.<sup>130</sup> This action is insufficient and dangerous to the victim. Only after an aggressor violates a protective order repeatedly will he be held liable under Article 320 of the Criminal Code for non-observance of a court order.<sup>131</sup>

The Ministry of Internal Affairs has recently begun to keep data on the numbers of violations of protective orders and the sanctions issued. From January - July 2012, 44 protection orders were violated and, as a consequence, 38 administrative cases were initiated under Article 318 of the Contravention Code, which authorizes only a fine.<sup>132</sup> Six criminal cases were started for *repeated* violation under Criminal Code Article 320.<sup>133</sup>

<sup>123</sup> Interview with Shelter, City D, 7 November 2011.

<sup>124</sup> Id.

<sup>125</sup> Interview with Lawyer, City D, 8 November 2011.

<sup>126</sup> Interview with Lawyer, City D, 8 November 2011; Interview with Judge, City D, 9 November 2011; Interview with Human Rights Advisor, City D, 10 November 2011.

<sup>127</sup> Interview with Lawyer, City D, 8 November 2011.

<sup>128</sup> Law 45 Chapter III Article 17.

<sup>129</sup> As of 2012, the Administrative Code is now called the Contravention Code. See Appendix D for complete text of Contravention Code Article 318.

<sup>130</sup> The Ministry of Internal Affairs released guidelines for police in August 2012. The guidelines contain references to warnings and a warning form that appears to apply to any domestic violence incident as well as to violations of protective orders. The authors remain concerned that aggressors are not held accountable and victims are not protected if only warnings are issued. See Ministry of Internal Affairs, Methodical Guidelines on the intervention of the internal affairs bodies in preventing and combating cases of domestic violence (2012), [http://www.mpsfc.gov.md/file/documente%20interne/instructiuni\\_mai%20%281%29.pdf](http://www.mpsfc.gov.md/file/documente%20interne/instructiuni_mai%20%281%29.pdf).

<sup>131</sup> Interview with Police, City D, 11 November 2011. Under the Criminal Procedure Code, a second violation of a protective order can be a cause for "apprehension" for up to 72 hours (Article 165(1) and (2)(2)) or preventative arrest/detention. (Article 185(1) and (2)(3)).

<sup>132</sup> See Appendix D for complete text of Contravention Code Article 318.

<sup>133</sup> Criminal Code Article 320 states: "(1) Intentional non-fulfillment or failure to fulfill a court's decision if it was committed after an administrative sanction was imposed, shall be punished with a fine in the amount of 200 to 300 conventional units or with community work in the amount of 150 to 200 hours, or with deprivation of liberty for up to 2 years. (2) Intentional non-fulfillment or failure to fulfill a court decision by a public official, as well as obstruction to fulfill it, if these acts were committed after an administrative sanction was imposed, shall be punished with a fine in the amount of 300-500 conventional units or with community work in the amount of 180-240 hours or with deprivation of liberty for up to 3 years, in all cases with the withdrawal of the right to hold certain positions or to conduct a certain activity for a period of 2 to 5 years."

Interviews similarly revealed that if a violation of a protective order is sanctioned at all, aggressors most often receive a fine.<sup>134</sup> For example, members of a rural multi-disciplinary team described a case in which an aggressor had beaten the victim with his fists. The victim obtained a protective order which specified that the aggressor was forbidden to see the children or to approach the home. The aggressor violated the order by coming to the home and received a fine for the violation.<sup>135</sup> Fines as penalties punish victims and families too. A journalist stated, “Where the woman files a report of violence at the police office and the aggressor gets administrative fines and nothing else, the money often comes from the common money. She would rather withdraw the complaint and have enough money to feed the children than to have to pay the fine.”<sup>136</sup> A more robust police response to a first-time protective order violation could include charges on other applicable crimes, such as threats to life or hooliganism.<sup>137</sup>

Interviews revealed that the most frequent violation of a protective order is the aggressor’s refusal to leave the home.<sup>138</sup> “If the aggressor is evicted [by the protective order] the police have no tools to ensure it,” stated a ministry official.<sup>139</sup> One lawyer described a case involving a series of violent incidents against a victim, including attempted strangulation. The victim obtained a protective order evicting the aggressor from the domicile, but she had to call the police repeatedly when the aggressor refused to leave the home. The police were unresponsive and told her that her claims were untrue. At one point a police officer told her, “If you keep complaining I will show you and your lawyer something to complain about.”<sup>140</sup> Her continued requests for the police to come to the apartment resulted in more administrative sanctions filed against her and no sanctions against the aggressor.<sup>141</sup>

### Perpetrator - Police Connections

Interviews revealed that victims often do not receive protection from law enforcement when the police and perpetrator are friends or relatives. Maternal center and NGO staff members described several of these situations in which police offered no protective remedies and convinced victims of repeated violence to withdraw their complaints in these situations.<sup>142</sup>

For example, a village multi-disciplinary team chief stated that police were less likely to take a case of domestic violence seriously when they knew the aggressor. “[E]veryone here knows everyone and the police might be afraid of the perpetrator [or] know the perpetrator and would not be professional enough in taking [the victim’s] case.” This is very common, she said, but she also noted that not all police have the same attitude.<sup>143</sup> A shelter director noted that in many situations, the police might be a relative of the aggressor. In those cases, the shelter’s lawyer avoids communicating directly with the local police and works with higher-ranking officials.<sup>144</sup>

<sup>134</sup> Interview with Police, City D, 11 November 2011; Interview with Multi-disciplinary Team, City G, 15 November 2011. Experts agree that a fine can be a punishment for the entire family. UN Department of Economic and Social Affairs & Division for the Advancement of Women, [Handbook for Legislation on Violence against Women](#) (2010), Section 3.11.4.

<sup>135</sup> Interview with Multi-disciplinary Team, City G, 15 November 2011.

<sup>136</sup> Interview with Journalist, City D, 9 November 2011.

<sup>137</sup> Interview with Lawyer, City D, 25 April 2011.

<sup>138</sup> Interview with Police, City D, 11 November 2011.

<sup>139</sup> Interview with Ministry of Internal Affairs, Chisinau, 9 November 2011.

<sup>140</sup> Interview with Lawyer, City D, 9 November 2011. The officer received an economic sanction for this threat.

<sup>141</sup> Id.

<sup>142</sup> Interview with Maternal Center, City E, 18 November 2011; Interview with NGO, City D, 8 November 2011; Interview with Shelter, City D, 7 November 2011.

<sup>143</sup> Interview with Multi-disciplinary Team, City F, 16 November 2011.

<sup>144</sup> Interview with Shelter, City D, 7 November 2011.



## POLICE IMPLEMENTATION OF CRIMINAL CODE ARTICLE 201<sup>1</sup>

In 2010, all forms of domestic violence, including economic, psychological, and physical violence, irrespective of the degree of injuries, were criminalized through Article 201<sup>1</sup> of the Criminal Code.<sup>145</sup> Interviews revealed that Article 201<sup>1</sup> can be used effectively by willing police officers even in cases of light injuries which are so common in domestic violence cases. Police in one rayon filed 64 cases in the first 10 months of 2011 based upon Article 201<sup>1</sup>, and 70% were light injury cases.<sup>146</sup> There, two officers were dedicated to improving the police response to domestic violence. The officers had working meetings with judges and prosecutors to discuss problems and to "...try to understand how judicial practice works and what pieces of evidence are convincing to judges."<sup>147</sup> The investigative officer stated:

[I]f you have the right approach you can get a lot of evidence. You will find blood on objects, see what is thrown around, the family members, the neighbors...that is why I have a specially-dedicated person to handle domestic violence cases. The fact that people are assigned to this crime, they have experience with the crime in what kind of information to collect...We've seen what the judges are requesting...We assumed the risk to file cases under Article 201<sup>1</sup>.<sup>148</sup>

Statistics indicate that police are beginning to use the criminal law. During the first six months of 2012, 479 cases of criminal domestic violence were registered<sup>149</sup> as compared to just 396 cases of criminal domestic violence registered during the first 11 months of 2011 in all of Moldova.<sup>150</sup> Importantly, criminal procedures were initiated in 327 of the 479 cases, a 70% improvement over a similar period of time in 2011 when only 190 cases of domestic violence were initiated under Article 201<sup>1</sup>.<sup>151</sup>

Notwithstanding these efforts, interviews revealed that criminal charges have been relatively rare in Moldova. The 479 cases listed above represent less than 15% of the total of 3,088 complaints of criminal domestic violence received by police in January - June of 2012.<sup>152</sup> Even cases of severe injury have escaped police investigation and review by prosecutors. Thus, police are missing an important opportunity to hold aggressors accountable, stop the escalation of the violence, and send a clear message of zero tolerance of domestic violence to aggressors and the community. High-level police are concerned that if Article 201<sup>1</sup> is enforced, "a lot of the population will be criminalized."<sup>153</sup> A police officer in a small town agreed, saying, "We can't file a criminal case against all the husbands because you will have all the husbands criminalized."<sup>154</sup>

### Few Cases Pursued Under Article 201<sup>1</sup>

Police frequently take no action to pursue criminal charges, even in serious cases. A police officer from a rural multi-disciplinary team stated:

Recently there was a case where the victim was not willing to disclose the cause of the injury, but it was very evident that she had a bone fracture, and it was not because she fell down. It was evident that she was abused. But the victim denied it when the police wanted her to report about it. They

<sup>145</sup> See Appendix C for complete text of Article 201<sup>1</sup>.

<sup>146</sup> Interview with Investigative Police Officer, City A, 15 November 2011.

<sup>147</sup> Id.

<sup>148</sup> Id.

<sup>149</sup> Statistics from the Ministry of Internal Affairs, July 2012, on file with authors.

<sup>150</sup> Interview with Ministry of Internal Affairs, Chisinau, 9 November 2011.

<sup>151</sup> Statistics from the Ministry of Internal Affairs, July 2012, on file with authors.

<sup>152</sup> Statistics from the Ministry of Internal Affairs, July 2012, on file with authors.

<sup>153</sup> Interview with Ministry of Internal Affairs, Chisinau, 9 November 2011.

<sup>154</sup> Interview with Police, City F, 17 November 2011.

invited the perpetrator and discussed it with him. They pressured him, but the perpetrator did not admit to it. No further action was taken - no protective order or a criminal case.<sup>155</sup>

A gynecologist in the same multi-disciplinary team described a case in which there were no charges. “The victim complained that her husband was aggressive to her. She was pregnant in her third trimester.... He had been physically violent to her, and she had bruises.”<sup>156</sup> The police officer added, “The police got involved, and we followed the framework of the law. We included the family on the list to be monitored. She had only light injuries.”<sup>157</sup> In another case, a victim had very severe injuries, including many bruises and knife wounds. She had been beaten many times before and had received no response from police. They applied for an order for protection, but there were no criminal charges.<sup>158</sup>

Interviews revealed that the first time violence is reported and if injuries are light, police often file an administrative case<sup>159</sup> under Contravention Code Article 78, which covers light injuries between any two persons.<sup>160</sup> A prosecutor explained, “The police follow the old system [before Article 201<sup>1</sup> was passed] - where the light damages were filed as an administrative file and not a criminal case.”<sup>161</sup> A social assistant stated, “[P]olice don’t accept the new rules yet.”<sup>162</sup> Indeed, statistics from the Ministry of Internal Affairs indicate that in the first six months of 2012, 18% of the administrative cases initiated by police under Article 78 of the Contravention Code were between family members and thus could have been pursued as criminal cases under Article 201<sup>1</sup>.<sup>163</sup>

Interviewees reported that police will also often issue administrative sanctions in dangerous cases. A lawyer described a case that could have been effectively addressed by Article 201<sup>1</sup>:

In February of 2011... [The aggressor] punched her face and took a mop and hit her on the back several times. She ran away from him and he followed her. He hit her twice with his fists, then pressed her head and face into the bed. He scratched her face and slammed her head and body into the wall. The violence took place over the course of several hours.... She ran away to her sister’s house... He came to the sister’s house and spit on her, swore at her, and threatened her. He pushed their daughter, who tried to separate them. The victim went to the local police. The police referred them to a forensic doctor... The injuries [bruises on the arm, face, and chin] were classified as injuries that do not damage the health of the individual. The next day the police put together an administrative record for her case. The administrative court sanctioned him with an administrative fine - 500 lei [40USD]... He paid the fine and remained at home.<sup>164</sup>

Interviews revealed that many police believe that repeated incidences of violence are necessary in order to use Article 201<sup>1</sup>.<sup>165</sup> An officer stated they would apply Article 78 of the Contravention Code in cases of one instance of violence resulting in slight injury, and they would only apply Article 201<sup>1</sup> when there was systematic or repeated violence.<sup>166</sup> Another officer described a case:

This was an ex-wife with a nine-month old child. They were living separately, but the ex-husband would come to the house and threaten her. There had been physical violence in the past. The acts

<sup>155</sup> Interview with Multi-disciplinary Team, City G, 15 November 2011.

<sup>156</sup> Id.

<sup>157</sup> Id.

<sup>158</sup> Interview with Maternal Center, City B, 14 November 2011.

<sup>159</sup> Interview with Police, City D, 11 November 2011; Interview with Police, City I, 18 November 2011.

<sup>160</sup> See Appendix D for complete text of Contravention Code Article 78.

<sup>161</sup> Interview with Prosecutor, City D, 8 November 2011.

<sup>162</sup> Interview with Shelter, City D, 8 November 2011.

<sup>163</sup> Statistics from the Ministry of Internal Affairs, July 2012, on file with authors.

<sup>164</sup> Interview with Lawyer, City D, 16 November 2011.

<sup>165</sup> Interview with Police, City I, 17 November 2011; Interview with Police, City D, 11 November 2011; Interview with Police, City I, 18 November 2011; Interview with Police, City B, 14 November 2011.

<sup>166</sup> Interview with Police, City B, 14 November 2011.

were registered with the police. He got an administrative sanction and paid a fine several times. This time, she came to police to say that she was again being bothered by the ex-husband. She was told that Article 201<sup>1</sup> exists and that she could open a criminal case against him and seek a protective order for 90 days. A protection order was issued for 90 days. The case went to court, and we don't know the penalty yet. In order for the case to be criminalized, the violence needs to happen repeatedly.<sup>167</sup>

The common practice of pursuing domestic violence cases as administrative offenses rather than criminal violations results in fewer arrests and detention of perpetrators and continued vulnerability for victims. Arrest is considered an “extreme measure” and “is very rarely applied.”<sup>168</sup> In addition, interviews revealed a lack of consensus among police as to when they can arrest a violent offender. Police interviewees stated that with a light injury administrative offense, they do not have the authority to arrest an aggressor to remove him from the violent situation.<sup>169</sup> However, under Law 45, in cases of emergency and “contingent on the gravity of the case,” police are required to ensure the administrative arrest of the aggressor.<sup>170</sup> Other police have welcomed Article 201<sup>1</sup>'s criminalization of all levels of domestic violence because it allows them to immediately arrest a violent aggressor.<sup>171</sup>

In one case, failure to arrest a violent offender exposed a victim to extreme additional harm. The victim was living with a man who was often physically violent with her. One day, after he beat her with a metal pipe, she went to the police and filed a complaint. Police told her to obtain a forensic doctor report and later visited the home. At the scene, police confiscated the metal pipe used as the weapon but determined that the victim and the aggressor were drunk and had “made up.” The officer left without arresting the aggressor or otherwise removing him from the home. The aggressor again became violent. He beat her and repeatedly stabbed her in the arms and legs with a screwdriver. He pressed her against a wooden door, stripped her, and made her jump on one leg and then the other. Then he raped her. In the morning, he took her to the police station and pressured her to withdraw the initial complaint. Instead of dropping the case, the police filed a criminal case under Article 201<sup>1</sup> and Article 171 (Rape), and only then was the aggressor detained under the Criminal Procedure Code allowing for a preventive arrest.<sup>172</sup> The case went to court within 25 days and the aggressor remained in jail during that time. A later check of the aggressor's record revealed prior incidents of domestic violence and eight administrative cases involving neighbors.<sup>173</sup>

<sup>167</sup> Interview with Police, City F, 17 November 2011.

<sup>168</sup> Interview with Judge, City D, 9 November 2011.

<sup>169</sup> Interview with Police, City D, 11 November 2011.

<sup>170</sup> Law 45 Chapter II Article 8(6)f.

<sup>171</sup> Interview with Investigative Police Officer, City A, 15 November 2011.

<sup>172</sup> See Appendix C for full text of Article 185.

<sup>173</sup> Interview with Investigative Police Officer, City A, 15 November 2011.



## PROSECUTORS

Prosecution of domestic violence crimes in Moldova is hampered by lack of clarity in the law, different interpretations of the law, and a failure to prioritize victim safety and offender accountability. Criminal prosecutions are rarely pursued in cases involving low-level injuries or first-time offenses. Prosecutions are frequently dropped if the parties reach a settlement, the victim recants, or the victim does not want to cooperate with the prosecution.<sup>174</sup>

Moldova's recently enacted Criminal Code provision against family violence allows for prosecution of all levels of domestic violence injuries.<sup>175</sup> In addition, if a criminal prosecution goes forward, a victim may request that the prosecutor or court issue a protective order during the process.<sup>176</sup> In practice, however, prosecutors pursue few prosecutions of domestic violence under the Moldovan criminal law, and thus criminal protective orders are seldom used.

### LIMITED PROSECUTIONS OF DOMESTIC VIOLENCE UNDER THE CRIMINAL CODE

Since Article 201<sup>1</sup> came into effect, there have been limited prosecutions of domestic violence under the Criminal Code, but the numbers are increasing. In 2010, prosecutors initiated 16 penal prosecutions based on Article 201<sup>1</sup>.<sup>177</sup> During the first 10 months of 2011, prosecutors sent 259 cases to court.<sup>178</sup> In the first six months of 2012, 327 criminal cases were initiated based on Article 201<sup>1</sup>.<sup>179</sup> However, the 327 cases represent only about 10% of all reported cases of domestic violence.<sup>180</sup> Despite the language of Article 201<sup>1</sup> incorporating all levels of injury, prosecutors, like police, rarely view domestic violence as a crime unless it is repeated or results in severe injury or death.<sup>181</sup>

Interviews also revealed that it is common for prosecutors to blame victims for violence or minimize the aggressor's criminal behavior.<sup>182</sup> One interviewee described a troubling scenario in which a prosecutor rebuffed a victim's request for help, and instead pushed her into mediation. The woman's husband had beat, threatened, and stalked her. She sought a protective order and brought her case to the

<sup>174</sup> In the Moldovan Criminal Law system, victims may become a Damaged Party in a criminal case against their aggressor. As a Damaged Party, a victim may be entitled to receive some damages in connection with the criminal case. Settlement is often reached between the Damaged Party and the Perpetrator. If such a settlement is reached, prosecutors routinely drop the criminal prosecution of the Perpetrator for domestic violence. One interviewee explained, however, that even if the parties settle that part of the case, such a settlement should not have a legal effect on the prosecution and the Perpetrator can still be prosecuted. However, many prosecutors drop a case once settlement is reached between a Damaged Party and the Perpetrator because it will be harder to show evidence and make a strong case. Interview with Prosecutor, City B, 14 November 2011.

<sup>175</sup> Criminal Code Article 201<sup>1</sup>. See Appendix C for full text of Article 201<sup>1</sup>. This provision was added to the Moldovan Criminal Code in 2010 with the passing of Law 167 and came into effect in September of 2010. Prior to that time, to the extent it was penalized at all, domestic violence was treated as an administrative offense under Article 78 of the Administrative (now Contravention) Code which is within the purview of the Moldovan police. Continued confusion on which law to use in cases of domestic violence results in limited protection for victims and reduced accountability for aggressors. (See Police section on page 11.)

<sup>176</sup> Criminal Procedure Code Article 215<sup>1</sup>. In fact, prosecutors themselves should recognize when victims are in danger, and the law should give prosecutors the power to request these measures themselves.

<sup>177</sup> Interview with Deputy Prosecutor General, City D, 9 November 2011.

<sup>178</sup> *Id.*

<sup>179</sup> Statistics from the Ministry of Internal Affairs, July 2012, on file with authors.

<sup>180</sup> Police registered 3,088 complaints concerning domestic violence cases from January to July 2012. Statistics from the Ministry of Internal Affairs, July 2012, on file with authors. See, e.g., Interview with Police, City F, 17 November 2011 (Nine criminal cases filed under Article 201<sup>1</sup> in 2011); Interview with Prosecutor, City D, 8 November 2011.

<sup>181</sup> Interview with Prosecutor, City E, 18 November 2011; Interview with Shelter, City D, 7 November 2011.

<sup>182</sup> Interview with Rayon Council Social Assistant, City B, 14 November 2011; Interview with Shelter, City D, 4 November 2011; Interview with Lawyer, City D, 8 November 2011.

prosecutor.<sup>183</sup> The prosecutor refused to pursue the case and attempted to dissuade her from seeking a protection order.<sup>184</sup>

In another case, after obtaining a civil protective order on behalf of a mother and her child, a lawyer tried to persuade a prosecutor to pursue a criminal prosecution against the aggressor.<sup>185</sup> The prosecutor opened a criminal case for domestic violence against the child only after a delay of six months.<sup>186</sup> During those six months, the mother and child continued to be beaten every week.<sup>187</sup> Despite numerous forensic reports documenting physical injuries and three protective orders, prosecutors failed to charge the aggressor with a crime against the mother.<sup>188</sup> The delay or failure to pursue criminal prosecution of domestic violence offenders leaves victims dangerously vulnerable to continued violence and likely discourages them from seeking legal system intervention. One prosecutor, who demonstrated an understanding of these dynamics, emphasized the importance of compiling evidence of even low-level crimes because showing a history of abuse in low-level crimes can help increase penalties for perpetrators. "It is more convincing to the judge and shows a clearer picture as to why it happened," he said.<sup>189</sup>

In one case, a victim suffered a bone fracture as a result of domestic violence but, because she did not file a complaint, no further action was taken. Prosecutors did not charge the aggressor or request a protective order. The victim was referred to the social assistant, and the police kept the evidence for monitoring purposes.<sup>190</sup>

In another example, a victim suffered serious injuries from being severely beaten. She received a 90-day protective order requiring the aggressor to leave the couple's shared home, not visit the victim's workplace, not use violence against the victim, and pay damages for medical treatment of the injuries she suffered from his violence. The aggressor blatantly disregarded the order but suffered no consequence for his violation. The victim was forced to live with a friend and could not obtain her belongings because the aggressor refused to leave or let her into the home. Prosecutors also refused requests to pursue criminal charges against the aggressor for failing to follow the protective order. The aggressor faced no consequences for his disregard of the protective order and, in effect, enjoyed complete impunity for his use of violence.<sup>191</sup> A high-level prosecutor said that when prosecutors perceive the cases of domestic violence as a serious social problem and as a violation of human rights, and not just as a private matter between husband and wife, it will have a positive impact on the implementation of the law.<sup>192</sup> Interviews revealed that districts where the police and prosecutors are in agreement that Article 201<sup>1</sup> applies to all

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<sup>183</sup> Interview with Multi-disciplinary Team, City F, 16 November 2011.

<sup>184</sup> *Id.* Mediation should never be allowed in domestic violence cases because it is counterproductive and even dangerous. Mediation assumes that both parties are equal, yet an offender holds tremendous power over a victim. The imbalance of power between the parties cannot be remedied despite the skills of the mediator, even when a victim advocate or attorney is present. During mediation, the offender can easily control the victim through the use of signals known only to the couple. Additionally, if there is a long history of domestic violence, the victim is often afraid and reluctant to voice her concerns. The Advocates for Human Rights, Stop Violence against Women, February, 2008, <http://www.stopvaw.org/Mediation.html>. Furthermore, mediation diminishes aggressor accountability for violent behavior and reflects an assumption that both parties are equally at fault for violence. It also may further endanger victims of domestic violence because, if seen as an alternative to criminal prosecution, it may allow for violent aggressors to avoid criminal prosecution and sanctions for their behavior.

<sup>185</sup> Interview with Lawyer, City D, November 8, 2011.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> Interview with Prosecutor, City B, 14 November 2011.

<sup>190</sup> Interview with Multi-disciplinary Team, City G, 15 November 2011.

<sup>191</sup> Interview with Lawyer, City D, 9 November 2011.

<sup>192</sup> Interview with Deputy Prosecutor General, City D, 9 November 2011.

domestic violence cases have better communication and collaboration in investigation and prosecute more cases.<sup>193</sup>

In another case, a victim who worked abroad to provide for her husband and three children was locked in a room by her husband when she returned to Moldova. He beat her every day for one month. She escaped out a window and sought help at a shelter. When she arrived at the shelter, she had bruises in the shape of his shoes on her back from where he had kicked her and severe trauma to her internal organs. The aggressor searched for the victim all over town, and the shelter considered him so dangerous they feared to have the victim leave the shelter even for medical care. Instead, a doctor came to the shelter. The victim was afraid for her children and did not want to press criminal charges. Despite the significant evidence against the aggressor, the prosecutor's office did not pursue criminal charges. The woman left the country to continue working abroad, and the children live with her sister.<sup>194</sup>

Interviews also revealed that prosecutors too readily dismiss cases when a victim recants or reaches a settlement with the aggressor.<sup>195</sup> Victims may recant or not cooperate with a prosecution for many reasons, including fear of the aggressor, lack of support, lack of trust in the legal system, threats, shame, or economic dependency on the aggressor. It is important that prosecutors continue to prosecute criminal cases against domestic violence aggressors even when victims recant or do not cooperate with the prosecution. Otherwise, aggressors escape accountability for their use of violence.

In addition, there is a discrepancy under the law as to whether or not prosecutors have the authority to drop domestic violence cases.<sup>196</sup> In practice, however, prosecutors stop the criminal case when the parties reconcile.<sup>197</sup> There is no uniform protocol for determining whether a settlement between the parties is truly voluntary or reached by threat, intimidation, or violence. One interviewee revealed that when a victim agrees to a settlement, the prosecutor will often talk to both the victim and the aggressor at the same time to work out the settlement. In some cases, the victim does not have a lawyer with her.<sup>198</sup> This practice assumes the victim can negotiate on an equal basis with the aggressor, allows the aggressor to escape penalty for his use of violence, and exposes the victim to further danger.<sup>199</sup>

<sup>193</sup> Interview with Prosecutor, City D, 14 November 2011; Interview with Police, City D, 11 November 2011.

<sup>194</sup> Interview with Shelter, City D, 7 November 2011. This incident may have happened only months before the amendments to the Criminal Code, however, the interviewees stated that no criminal charges were pursued at all, even under another relevant statute.

<sup>195</sup> See footnote 174 for explanation of the settlement process and its effect on prosecution of a case.

<sup>196</sup> Some interviewees believe there is a legal basis for stopping a domestic violence case if the parties settle. Those interviewees explained there are two legal bases under which to stop cases of domestic violence upon the settlement of the parties: first, Article 109 of the Criminal Code which provides for reconciliation in cases with slight or less than medium injuries or, for criminal cases, in Chapters 2-6 of the Criminal Code; second, Article 276 in the Criminal Procedure Code describes when criminal proceedings can be started and stopped. Specifically, Article 276(5) gives instructions for settlement in "cases mentioned in para. (1)" of Article 276. However, others believe that there is no legal basis that allows for the settlement of domestic violence cases and, therefore, cases should not be dropped. These respondents believed that because Article 201<sup>1</sup> is not listed within Chapters 2-6, Article 109 should not apply to Article 201<sup>1</sup>. Furthermore, because Article 201<sup>1</sup> is not explicitly listed under Article 276(1), the instructions for settling a case of family violence in Article 276 paragraph (5) do not apply to allow for settlement in domestic violence cases, and the instructions within that paragraph were simply included inadvertently during the revision process. Interview with Lawyer, City D, 16 November 2011. As a result, some say that this means criminal proceedings of domestic violence should not be stopped even at the request of the parties. Clear instructions or legal amendments are necessary to clarify this ambiguity and opposing interpretations.

<sup>197</sup> Interview with Lawyer, City D, 25 April 2012.

<sup>198</sup> Interview with Police, City B, 14 November 2011.

<sup>199</sup> See footnote 184 on dangers of mediation.



## PROSECUTION OF VICTIMS WHO CLAIM SELF-DEFENSE

Interviews revealed that evidence of self-defense or the effects of battery on victims has not been used consistently to explain victim behavior and mitigate penalties.<sup>200</sup> In one case, a victim killed her abusive partner while trying to escape a brutal assault and rape. She was charged with murder and received the maximum penalty of 20 years. Evidence of self-defense was not presented nor was evidence of past physical abuse she and her two children suffered at his hands. With the help of a lawyer, she appealed and introduced some limited evidence of the abuse; however, the penalty was only reduced by three years.<sup>201</sup>

A lawyer recalled three cases where the victim was charged with violence against her abusive husband and evidence of self-defense and history of abuse were not considered.<sup>202</sup> The lawyer said, "...the criminal investigation authorities did not take into account that the woman had been subjected to domestic violence for several years and the criminal acts of the woman were in reaction to previous violence. We have this gap. I raised the issue of self-defense but the authorities did not take into account this request and continued to prosecute the case."<sup>203</sup>

In another case, a victim was charged with violence against her ex-husband after she tried to defend herself and her six-year-old son. The couple had divorced because the ex-husband had sexually abused the couple's son. After the divorce, the ex-husband beat her in the presence of the child and tried to take the child when she went to pick him up from kindergarten. The woman received a protective order that temporarily suspended visitation rights. After the protective order expired, the ex-husband went to the kindergarten and took the child. The police did not respond to the woman's requests for help in getting her son back. When she went on her own to retrieve her son, the ex-husband attacked her and she defended herself. The woman suffered bruises and other injuries that did not meet the level of light bodily injury. The ex-husband reported that she attacked him first by hitting his genitals and obtained a forensic report that classified this as light bodily injury. As a result, the police opened a misdemeanor file against her for the violence she used against the ex-husband but refused to charge the ex-husband for his use of violence against the woman. Despite maintaining the charges against the woman, prosecutors refused to charge the ex-husband with domestic violence, claiming that the law did not cover the woman because they were no longer married and did not live together.<sup>204</sup> The history of abuse and violence against both the son and the woman were not taken into account at any level of the system's response to this case. The lawyer who is working with the woman in this case stated that it demonstrates two gaps in the law: formerly married couples who are not cohabitating are not protected by the domestic violence law; and there is no stalking law.<sup>205</sup>

## RESPONSE TO VIOLATIONS OF CIVIL OR CRIMINAL PROTECTIVE ORDERS

Although a violation of a protective order is a basis for renewing or extending a previous protection order under both the civil and criminal law,<sup>206</sup> in practice interviewees revealed that these provisions are rarely

<sup>200</sup> Psychologists are not considered expert witnesses to explain victim behavior. Interview with Lawyer, City D, 10 November 2011.

<sup>201</sup> Interview with Victim, City H, 17 November 2011.

<sup>202</sup> Interview with Lawyer, City D, 10 November 2011. In one of the cases, the lawyer compiled police statements indicating that there had been a history of violence but police had only responded by sanctioning the offender with administrative fines. The lawyer also offered a statement from the son declaring that the father would become violent against him and his mother when he drank.

<sup>203</sup> Id.

<sup>204</sup> Interview with Lawyer, City D, 8 November 2011.

<sup>205</sup> Id.

<sup>206</sup> Criminal Procedure Code Article 215<sup>1</sup>(4) states "The duration of protective measures may be extended by the court at the repeated request addressed as a result of the committal of acts of family violence or as a result of nonobservance of the conditions established in the protective ordinance." Law 45 Article 15(3) states "Orders ...may be extended in case of a repeated claim or if the conditions set in the protective order have not been observed." The civil law does not criminalize the first violation of the protection order and, to be extended, both criminal and civil laws

*Footnote continued on next page . . .*



applied. Aggressors are not arrested or detained, violations are not reported to prosecutors, or, if they are reported, they are not pursued by prosecutors for prosecution.<sup>207</sup> In a previously-mentioned case, a victim who suffered serious injuries from being severely beaten received a 90-day protective order that included eviction of the aggressor.<sup>208</sup> The aggressor disregarded the order, forcing the victim to live with a friend. Prosecutors refused requests to pursue criminal charges against the aggressor for repeated failure to follow the protective order. The court denied a request for an extended protective order and the victim remained unprotected, without a home or her belongings. The aggressor case faced no consequences for his disregard of the protective order.

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*... footnote continued from prior page*

require either the order to be violated or, in effect, a new act of domestic violence. This requires the victim to be vulnerable to violence before she is able to receive continued protection. See Appendix A and Appendix C, respectively, for complete texts of Law 45 and Criminal Procedure Code Article 215<sup>1</sup>(4).

<sup>207</sup> Interview with Lawyer, City D, 8 November 2011; Interview with Human Rights Advisor, City D, 10 November 2011; Interview with Prosecutor, City C, 16 November 2011.

<sup>208</sup> Interview with Lawyer, City D, 9 November 2011.



## JUDICIARY

Judges in Moldova reported dealing with the issue of domestic violence both directly through requests for protective orders and criminal prosecutions of aggressors and indirectly in cases of divorce and child custody.<sup>209</sup> While there were positive reports that some judges in Moldova approach the issue of domestic violence seriously and understand the dynamics of domestic violence,<sup>210</sup> interviews also revealed pervasive attitudes and practices that jeopardize the safety of domestic violence victims.

### ATTITUDES OF JUDGES

Many judges demonstrate harmful stereotypes about domestic violence, victims, and perpetrators.<sup>211</sup> A former NGO director noted that, “Some courts think that the woman victim of domestic violence is to blame because she is not a good wife.”<sup>212</sup> A judge thought that protective order numbers were low because victims “are not courageous enough.”<sup>213</sup> Interviews revealed that judges are hesitant to issue protective orders or pursue aggressor accountability because of the prevalent misperception that victims are lying to abuse the system for their own benefit or solely to penalize their partners.<sup>214</sup> The misperception that domestic violence victims are lying to manipulate the system causes some judges to increase the standard of evidence required to issue protective orders.<sup>215</sup> In addition, interviews indicated that some judges are more concerned about an aggressor’s property rights than the safety of the victim.<sup>216</sup>

Victims who are already in shelters or in the process of divorce or separation may be denied remedies and protection because judges believe the divorce or separation will solve the violence. One judge stated that if a couple was in the process of a divorce, a protective order would not be necessary even if there was domestic violence related to the divorce proceedings.<sup>217</sup> Research shows, however, that the time after which a victim leaves her aggressor is one of the most dangerous times for victims.<sup>218</sup>

### JUDICIAL RESPONSE TO “SETTLEMENT” OF CRIMINAL CASES ENDANGERS VICTIMS

As discussed in the section on Prosecutors, domestic violence criminal cases are often dropped when a victim does not cooperate with prosecution, recants, or reaches a settlement with the aggressor.<sup>219</sup> There is disagreement among judges as to whether the law allows for the dismissal of domestic violence cases if parties “settle.”<sup>220</sup> Those who believe that settlement is possible explain that before a domestic violence case can be dismissed, prosecutors and judges should ensure that the settlement is voluntary and that

<sup>209</sup> Interview with Judge, City D, 9 November 2011.

<sup>210</sup> Interview with Police, City D, 11 November 2011, p. 8; Interview with Judge, City D, 9 November 2011.

<sup>211</sup> Interview with Judges, City D, 10 November 2011.

<sup>212</sup> Interview with Former NGO Director, City D, 7 November 2011.

<sup>213</sup> Interview with Judge, City D, 9 November 2011.

<sup>214</sup> Interview with Judge, City D, 9 November 2011; Interview with Judges City D, 11 November 2011.

<sup>215</sup> Id. Additional evidence beyond a victim’s statement and a report from social assistance or the police is not explicitly required by law. See Civil Procedure Code Article 318<sup>3</sup>(2): “The court **shall** request from the social assistance body or the police, as the case may be, to present a report characterizing the relevant family and the aggressor. The court **may also** solicit other acts required for the examination of the request.” (Emphasis added.)

Thus, a protective order could be granted solely on the victim’s statement in the application and the police or social assistance report, and the lack of additional evidence should not be a basis for delaying or denying protection.

<sup>216</sup> Interview with Judge, City D, 9 November 2011; Interview with Judges, City D, 11 November 2011. In fact, Law 45, the Civil Procedure Code, and the Criminal Procedure Code all indicate that a protective measure which removes an aggressor from a home does not determine property rights. Law 45 Article 15; Civil Procedure Code Article 318<sup>4</sup>(2)(a); Criminal Procedure Code Article 215<sup>1</sup>(3)(a).

<sup>217</sup> Interview with Judge, City D, 9 November 2011.

<sup>218</sup> Tennessee Coalition Against Domestic and Sexual Violence. [Tennessee Domestic Abuse Benchbook](#), § 1-3.04 (2009).

<sup>219</sup> See section on Prosecutors p. 23.

<sup>220</sup> Interview with Judges, City D, 11 November 2011. See footnote 196 explaining settlement controversy.

the victim has access to services or protection.<sup>221</sup> Yet, aggressors can often manipulate or intimidate a victim into agreeing to a settlement.<sup>222</sup> Interviewees explained that judges make a determination after seeing both parties in a hearing. The judge asks the victim the reason for the reconciliation and whether she believes the aggressor will not be violent again. “The judge tries to investigate how they reached this understanding. Also the perpetrator and victim are warned that they have reconciled and if the next day they fight, they will have to open a new case.”<sup>223</sup> As one judge explained, it is not sufficient for the parties to submit the request to settle; they must be present in court so the judge can see their faces and see how they answer certain questions. “When a person is sincere, they are calm and can answer well. When what they say is not true or honest, their behavior betrays them. Their hands tremble...”<sup>224</sup> Requiring a victim to discuss whether the settlement is voluntary or whether she needs additional protection in front of the aggressor is dangerous and ineffective. She is likely to be intimidated in his presence, and he may well be pressuring her to settle the case.

### JUDICIAL BARRIERS TO VICTIM REQUESTS FOR PROTECTIVE ORDERS

While a victim may apply directly to the court for a protective order,<sup>225</sup> judges noted that her application is more likely to be granted if submitted by the police or a lawyer.<sup>226</sup> One interviewee expressed the troubling view that the act of bringing a request alone was an indicator that the situation is less severe and the need for protection is not a priority, stating “in a real crisis victims call the police and don’t come directly to the court.”<sup>227</sup>

In addition, for victims pursuing a civil protective order on their own, there is no information available at the courts about the protective order process, and court administrative personnel are not trained to help victims.<sup>228</sup> Also, there are no standard forms available to fill out an application including what information is required and what protective measures are available.<sup>229</sup> In one case, a victim’s self-application for a protective order was denied because the judge ruled that the application needed to conform to other applications for protective orders. The victim was able to amend her petition, but it was several days before her case was re-examined; during this time, she was left without protection.<sup>230</sup>

### JUDICIAL TIMELINESS

Swift judicial response is essential for effective protection of victims. In one case of repeated and escalating violence, a lawyer successfully obtained a protective order from a judge on behalf of a victim

<sup>221</sup> Criminal Procedure Code Article 276(5) states “In cases of family violence, the prosecutor or the court shall determine whether the victim’s willingness to reconcile is expressed freely and shall ensure that the victim has had effective access to assistance and protection.” However, interviews revealed no clear protocol that incorporates an understanding of the dynamics of domestic violence or formal risk assessment tools for ensuring voluntary settlement or access to assistance and protection.

<sup>222</sup> Interview with Lawyers, City D, 10 November 2011.

<sup>223</sup> Interview with Judge, City D, 9 November 2011.

<sup>224</sup> Interview with Judges, City D, 11 November 2011.

<sup>225</sup> Law 45 Chapter III Article 12a and Law 45 Chapter III Article 13(1)b.

<sup>226</sup> Interview with Judges, City D, 11 November 2011; Interview with Judge, City D, 9 November 2011.

<sup>227</sup> Interview with Judge, City D, 9 November 2011.

<sup>228</sup> Id. Furthermore, there are no specialized courts or judges in Moldova to deal specifically with domestic violence cases or victims. One interviewee explained that there were too few judges to allow for such specialization. Interview with Judge, City D, 9 November 2011; Interview with Judge, City D, 10 November 2011; Interview with Judges, City D, 11 November 2011.

<sup>229</sup> Interview with Police, City D, 11 November 2011. Civil Procedure Code Article 318<sup>2</sup> states “The request for the application of protective measures shall specify the circumstances of the act of violence, its duration, suffered consequences, and other circumstances indicating that the application of protective measures is needed.”

<sup>230</sup> Interview with Judge, City D, 9 November 2011.

within just one hour. The court recognized that the situation was extremely dangerous and issued the order immediately.<sup>231</sup>

While interviews showed that protective orders sometimes are issued within the 24-hour time frame required by law,<sup>232</sup> there were many occurrences when they were delayed. One NGO employee stated, “There is a problem with timeliness. The protective order has to be issued within 24 hours after the judge receives the request, but this happens very rarely. Currently there is a case where the request for a protective order was addressed to the judge last Thursday. Today is Tuesday, and it is still not issued.”<sup>233</sup> A lawyer stated that she has cases where the protective order is issued in two hours and other cases where it takes three days.<sup>234</sup> Another lawyer stated that of the nine protective orders she had obtained, only one was actually issued in the 24-hour time limit, with her most recent application taking two weeks.<sup>235</sup> Another lawyer stated that she has had cases where it takes two to four weeks to issue the protective order, and in one case, an order requested in December was not issued until February.<sup>236</sup> Civil Procedure Code Article 318<sup>3</sup> requires the court to request that the police notify the aggressor of the initiation of the protective order application proceedings.<sup>237</sup> If the court’s decision is then delayed, the aggressor is on notice that the victim has applied for protection, yet she will have none. This provides the opportunity for an enraged aggressor to commit more violence or for a manipulative one to convince the victim to withdraw the application for protection.

The lack of night and weekend access to courts is one reason for delays in issuance of protective orders.<sup>238</sup> One judge stated that judges try to issue protective orders within 24 hours even if it meant they had to work at night.<sup>239</sup> However, another judge was vehemently opposed to using nights or weekends for issuing protective orders and stated that judges should have no less than 72 hours to issue a protective order.<sup>240</sup> This lack of 24-hour, seven-days-a-week access to courts<sup>241</sup> impedes the goal of an expedient judicial procedure and puts victims at risk of more violence. Advocates stated that this delay leaves them scrambling to ensure victims are protected over nights and weekends: “For example, if we have a protection order requested on Friday we know that it should be issued within 24 hours, but we are sure that it won’t be issued until Monday. If we know that the woman is in danger, we would place her in a shelter.”<sup>242</sup>

A lack of timely judicial communication also impedes effective implementation of protective orders. Moldova’s law requires that after a court issues a protective order it must immediately forward the order to the police and social assistant for “immediate execution.”<sup>243</sup> The police, in turn, are required to notify the aggressor, execute and enforce the order, and inform the court of any violations.<sup>244</sup> Interviews showed that there are gaps in this process that result in continued risk to victims. An interviewee stated, “Judges decide to issue the protection order but don’t inform the police or social assistant. So victims do not get protection.”<sup>245</sup>

<sup>231</sup> Interview with Victim, City G, 15 November 2011.

<sup>232</sup> See Law 45 Chapter II Article 15(1).

<sup>233</sup> Interview with NGO, City D, 8 November 2011.

<sup>234</sup> Interview with Lawyer, City D, 16 November 2011.

<sup>235</sup> Interview with Shelter, City D, 7 November 2011.

<sup>236</sup> Interview with NGO, City D, 9 November 2011.

<sup>237</sup> See complete text of Article 318<sup>3</sup> in Appendix A.

<sup>238</sup> Interview with Lawyer, City D, 16 November 2011.

<sup>239</sup> Interview with Judge, City D, 9 November 2011.

<sup>240</sup> Interview with Judges, City D, 11 November 2011.

<sup>241</sup> For example, a judge could be on call from home after hours.

<sup>242</sup> Interview with NGO, City D, 8 November 2011.

<sup>243</sup> Civil Procedure Code Article 318<sup>4</sup>(4).

<sup>244</sup> Interview with Judge, City D, 9 November 2011.

<sup>245</sup> Interview with Former NGO Director, City D, 7 November 2011.

## COURTROOM SECURITY

Interviewees stated that there are few security measures other than sometimes having police present at a proceeding.<sup>246</sup> Victims and aggressors enter through the same doors, use the same staircase, wait in the same hallways or waiting areas, and face each other in small courtrooms.<sup>247</sup> Security in court facilities is important not only to protect victims but also to encourage victims to access and participate in the justice system.

## EVIDENTIARY REQUIREMENTS FOR CIVIL PROTECTIVE ORDERS

Judges often require a forensic report, evidence of prior offenses, and witness accounts before they will issue a protective order.<sup>248</sup> This practice delays the issuance of the order and can also result in complete denial of protective remedies. Although the law does not clearly require additional evidence beyond a social assistance or police report to issue a civil protective order, in practice, victim declarations alone are often not considered sufficient to support a protective order if they are submitted without a forensic report, evidence of prior offenses, or witness accounts.<sup>249</sup> One interviewee stated, “If a social assistant or police goes to a judge with just an application and no forensic conclusion, the judge will not consider the case at all.”<sup>250</sup> However, one judge stated that in situations where injuries have been systematic, even though they are not currently visible, a victim’s statement would be enough to issue the protective order.<sup>251</sup>

In one case, a judge denied a woman’s request for an extended protective order on the basis that she was lying about the abuse because there was no forensic report to support her statements. The original order had been issued by a different judge without a forensic report but based on the victim’s statements and supporting testimony from the police. The second judge discounted all other evidence and claimed the woman was lying about the ongoing abuse solely because she did not have a forensic doctor report.<sup>252</sup>

## IMPRECISE PROTECTIVE MEASURES

A lack of clarity in protective orders puts victims at risk. In one case, a protective order was issued for 30 days, ordering the aggressor to stay away from and not contact the victim, but he was not ordered temporarily out of the home for the time of the protective order.<sup>253</sup> The aggressor and the victim were cohabitating, and it was impossible for the police to enforce the order to stay away from the victim.<sup>254</sup> A judge admitted that protective orders usually do not contain a specific distance that the aggressor must stay away from the victim. “The order just states that the perpetrator should stay away but not how far...in every case the victim and aggressor need to decide how far away the aggressor must stay. It is up to them to decide.”<sup>255</sup> A shelter director noted that in several cases, aggressors were ordered out of the apartment but not ordered to stay a specific distance from the victims. She said, “...he stays in the lobby

<sup>246</sup> Interview with Judge, City D, 9 November 2011.

<sup>247</sup> Id.

<sup>248</sup> Interview with Judge, City D, 9 November 2011; Interview with Judges, City D, 11 November 2011

<sup>249</sup> Id. See Civil Procedure Code Article 318<sup>3</sup>(2): *The court shall request from the social assistance body or the police, as the case may be, to present a report characterizing the relevant family and the aggressor. The court may also solicit other acts required for the examination of the request.* (Emphasis added.) Article 318<sup>3</sup>(2) does not state that additional evidence, other than the aforementioned social assistance or police report, is required to issue a protection order. Thus, it could be granted solely on the victim’s statement in the application and the police or social assistance report, and the lack of additional evidence should not be a basis for delaying or denying protection.

<sup>250</sup> Interview with Former NGO Director, City D, 7 November 2011.

<sup>251</sup> Interview with Judges, City D, 11 November 2011.

<sup>252</sup> Id.

<sup>253</sup> Interview with Multi-disciplinary Team, City I, 18 November 2011.

<sup>254</sup> Id.

<sup>255</sup> Interview with Judges, City D, 11 November 2011.

and doesn't let the wife leave. In many cases the victim needs a bodyguard to escort her past him when she wants to get out."<sup>256</sup>

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<sup>256</sup> Interview with Shelter, City D, 7 November 2011.





## MULTI-DISCIPLINARY TEAMS AND NATIONAL REFERRAL SYSTEM

Moldova's unique National Referral System and multi-disciplinary teams have great potential to promote victim safety and offender accountability. The National Referral System is a response system that coordinates referrals and services for victims. It was originally established to aid trafficking victims and, in 2008, was officially expanded to serve victims of domestic violence.<sup>257</sup> After an initial meeting with a social assistant, the National Referral System assigns a multi-disciplinary team to a victim depending upon her specific needs.<sup>258</sup>

Multi-disciplinary teams have been created at the village and rayon level in five pilot areas, but in other areas, multi-disciplinary teams exist only at the district level.<sup>259</sup> Some multi-disciplinary teams are mobile and travel to domestic violence cases in remote villages. Initial training, supported by international donors, has been provided to members of the multi-disciplinary team, including police officers, social assistants, health care providers, and teachers.<sup>260</sup>

### POSITIVE MULTI-DISCIPLINARY TEAM COOPERATION

Interviews revealed numerous examples of positive responses within the multi-disciplinary teams. A police officer in a small town asserted that there is good cooperation among the police, the medical professionals, social assistance institutions, and the schools.<sup>261</sup> A social assistant from a village explained that they have their own multi-disciplinary team which includes health care providers and police. Whenever the team has a domestic violence case, members of the team take coordinated steps to help provide the victim with services and help ensure that the aggressor is held accountable for his use of violence.<sup>262</sup> The social assistant explained that after a protection order has been issued, the team monitors the family once each month. The multi-disciplinary team also has monthly meetings to formulate action plans on how to address the perpetrator.<sup>263</sup>

Interviews revealed several examples of police and maternal center cooperation to implement a coordinated community response.<sup>264</sup> One maternal center staff member stated that they routinely travel to villages to talk to members of the multi-disciplinary team, not only about current cases but also about the attitude of the team with respect to the victim and aggressor.<sup>265</sup> She described their work with police to

<sup>257</sup> The UN Secretary-General's database on violence against women, Moldova, [National Referral System for Assistance and Protection of Victims and Potential Victims of Trafficking](#).

<sup>258</sup> Once a victim is a part of the National Referral System, a multi-disciplinary team is named to support her. The multi-disciplinary team is chosen from a standing commission made up of the social assistance directorate representative, an employment agency representative, a civil documents agency representative, a medical representative, the police, a prosecutor, a lawyer, a psychologist, and a teacher. Depending on the circumstances of the case, a multi-disciplinary team for a particular victim is formed, consisting of one to three relevant professionals. The multi-disciplinary teams meet about the case more frequently when the case is active, sometimes several days a week. Interview with Multi-disciplinary Team, City G, 15 November 2011; Interview with Multi-disciplinary Team, City F, 16 November 2011. They also meet to consider extending the time that a victim may stay in a shelter. Interview with Maternal Center, City A, 15 November 2011. In addition, Law 45 Chapter II Article 7(4) requires that a specialist in domestic violence be appointed within the departments for social assistance at the rayon level; however, interviews revealed that in most rayons this has not occurred. Instead, pre-existing child rights specialists became responsible for domestic violence involving both adult and child victims. Interview with Multi-disciplinary Team, City F, 16 November 2011; Interview with Coordinator of Multi-disciplinary Team, City E, 18 November 2011.

<sup>259</sup> Interview with Former NGO Director, City D, 7 November 2011.

<sup>260</sup> Interview with Ministry of Labour, Social Protection and Family, Chisinau, 11 November 2011.

<sup>261</sup> Interview with Police, City I, 18 November 2011.

<sup>262</sup> Interview with Multi-disciplinary Team, City G, 15 November 2011.

<sup>263</sup> Interview with Multi-disciplinary Team, City G, 15 November 2011.

<sup>264</sup> See explanation of maternal centers in footnote 11.

<sup>265</sup> Interview with Maternal Center, City C, 16 November 2011.

## MULTI-DISCIPLINARY TEAMS AND NATIONAL REFERRAL SYSTEM

draw up a protective order: "...they do it all together, 'shoulder to shoulder' with the police."<sup>266</sup> She explained that an upcoming training for all stakeholders on Law 45 was the result of "an agreement between the local public administration, the social assistance [department] and the police..."<sup>267</sup>

A staff member in another small-town maternal center said that a police officer came to their center and asked for guidance on necessary documentation of evidence in domestic violence cases. Based on this training, the officer investigated the case, strategically looking for the best evidence, and referred the case to the prosecutor. "It took time, but we hope there will be more cooperation with this investigative department," she said. "They even started the discussion of developing a draft of a cooperation agreement to finalize our agreement and to work in the future."<sup>268</sup> The chief of a multi-disciplinary team agreed, "I must tell you that there are improvements in cooperation with the police. We have many more cases referred by the police... We just started realizing this part, that cooperation is important."<sup>269</sup> In fact, interviews revealed that the police in that city had just hired a woman with a background in social work and psychology to meet with victims and that they had "good cooperation" with the city's maternal center in dealing with domestic violence cases.<sup>270</sup>

Despite the positive results of the National Referral System and the multi-disciplinary teams, delays, limited resources, and lack of accessibility diminish the potential effectiveness of these programs.

### NATIONAL REFERRAL SYSTEM DELAYS

Although the National Referral System can work effectively for victim safety, a victim in crisis may become stalled in bureaucracy. Confusion over National Referral System procedure can delay a victim's acceptance into a shelter and access to services. One maternal center director explained that the social assistant department in her town claims that only their department can refer victims to the shelter through the National Referral System. The social assistant refuses to send a victim to the maternal center without a time-consuming official placement. The maternal center director explained, "If this is the case, our center loses its main aim, to be like an emergency center... I have been discussing this with the social assistance department to modify this, but they insist there is a regulation or instruction they need to follow, and all beneficiaries are to go through the System."<sup>271</sup>

### MULTI-DISCIPLINARY TEAMS LACK ADEQUATE RESOURCES

Resources for multi-disciplinary teams are lacking in many areas of Moldova, which negatively impacts a victim's access to justice. In one center, the team did not have a vehicle to visit victims in remote villages. Travel time to a village could be over 12 hours, and services arrive "sometimes too late," a psychologist noted.<sup>272</sup>

A rayon president explained that community centers in five villages in her rayon were helpful for multi-disciplinary teams. The community centers, created under a project with government and international

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<sup>266</sup> Id.

<sup>267</sup> Id.

<sup>268</sup> Interview with Maternal Center, City A, 15 November 2011.

<sup>269</sup> Interview with Multi-disciplinary Team, City A, 15 November 2011.

<sup>270</sup> Interview with Investigative Police Officer, City A, 15 November 2011.

<sup>271</sup> Interview with Maternal Center, City A, 15 November 2011. Law 45 states that a victim can be referred to shelters by all bodies tasked with the prevention and combating of domestic violence: medical institutions, the police, social assistance and family protection departments, and centers for victims. Law 45 Chapter II. Another center noted that they are required to contact the social assistant in the victim's village to get the necessary documents, such as an assessment from the social assistant and a referral letter from an authority. Interview with Maternal Center, City E, 18 November 2011. The requirement of the immediate notification of her village social assistant may have a chilling effect upon a victim seeking help privately. The referral process should be monitored and refined so that victims may independently receive confidential and immediate help.

<sup>272</sup> Interview with Maternal Center, City A, 18 November 2011.

donors, provide social assistant services, psychological services, and a location for the multi-disciplinary teams to work separately with victims and perpetrators.<sup>273</sup> Yet, cramped conditions in many locations contribute to a lack of privacy for victims. A psychologist explained that there is no center with confidential meeting rooms in many small towns and villages. Victims must often travel to larger cities for specialized help. "We end up meeting at the municipal building.... There is a need for a center where she can get services - psychological, medical, legal - it is important to respect the need for confidentiality."<sup>274</sup>

Interviews revealed a lack of resources for daily work and for continuous training for multi-disciplinary team members. A village police officer stated that in the past he had worked often with the multi-disciplinary team, but "...now we don't have the resources to do as much work together. We don't have the resources to go to trainings."<sup>275</sup>

### **MULTI-DISCIPLINARY TEAMS ARE NEEDED IN URBAN AREAS**

Interviews revealed there is a need for effective and active multi-disciplinary teams in the larger cities as well. A high-level police official said that in the capital city, there is no communication between police and social assistants. They simply do not interact, and even if measures are taken, they do not coordinate.<sup>276</sup> A family doctor in a large city said that there was no formal coordination between the hospitals and other agencies, including law enforcement, legal professionals, the government, or even the forensic doctors in domestic violence cases.<sup>277</sup> As a result, this doctor did not know details of services available to victims, or how the police respond to victims, and he did not have any connection to forensic doctors. This lack of knowledge impairs physicians' ability to address the needs of victims of violence. A police officer in a large city agreed, saying, "There is a lack of cooperation across the professionals; if the multi-disciplinary team would be more active, there would be more information gathered and discussed."<sup>278</sup> He noted that in districts where the police and prosecutors cooperate and work together, cases of domestic violence were prosecuted.<sup>279</sup>

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<sup>273</sup> Interview with Rayon Officials, City I, 18 November 2011; Interview with Maternal Center, City C, 16 November 2011; Interview with Multi-disciplinary Team, City G, 15 November 2011.

<sup>274</sup> Interview with Multi-disciplinary Team, City G, 15 November 2011.

<sup>275</sup> Interview with Police, City F, 17 November 2011.

<sup>276</sup> Interview with Ministry of Internal Affairs, Chisinau, 9 November 2011.

<sup>277</sup> Interview with Physician A, City D, 7 November 2011.

<sup>278</sup> Interview with Police, City D, 11 November 2011.

<sup>279</sup> Id.



## SERVICES FOR DOMESTIC VIOLENCE VICTIMS

Many maternal center shelters, other shelters, NGOs, and social assistance departments have provided positive advocacy and services for domestic violence victims, but there are also gaps in these services. Maternal centers were originally founded in larger cities throughout Moldova to prevent the abandonment of infants.<sup>280</sup> These centers primarily serve young mothers with very young children who have no place to live.<sup>281</sup> In many areas, the local maternal center and an NGO became a joint organization to serve domestic violence victims and to facilitate funding from both government and private sources.<sup>282</sup> The Social Assistance and Family Protection Department within each municipality or rayon provides a social assistant to counsel and support domestic violence victims and to organize the multi-disciplinary teams. In addition, there are two shelters in Moldova that are not part of a maternal center. One is an NGO-run shelter and another is affiliated with both the Moldovan government and an international organization.

One regional maternal center described the difference its activities had made in the last six years. In the past, victims had been reluctant to seek help for abuse due to fear, shame, and hopelessness. Now, “[t]here is a big change in society since the work of the center began. Victims who have benefited have...spread the word. Victims come here asking for shelter or assistance.”<sup>283</sup>

Maternal centers and NGOs often ensure that victims are not interviewed repeatedly or otherwise re-traumatized and prepare them for court hearings. Some NGOs and maternal centers offer to accompany victims to court and inform them of their rights once a protective order is issued.<sup>284</sup> One maternal center helps support applications for protective orders by carrying out investigations.<sup>285</sup> Another maternal center described a case in which a protective order was issued based upon only the statements of the victim and their staff, likely due, they believed, to the center’s good reputation as domestic violence specialists.<sup>286</sup> One NGO shelter follows up with victims by calling to be sure the protective orders have not been violated and to invite them join support groups.<sup>287</sup> Many maternal centers and shelters do job training so that victims can become financially independent.<sup>288</sup> One maternal center reviews cases and discusses mistakes made by stakeholders and ways that the response to cases can be improved.<sup>289</sup>

In another good example of victim advocacy, one maternal center brought a seriously ill victim who lacked medical insurance back to the shelter for continued care when the hospital refused to keep her.<sup>290</sup> In another, a shelter with insufficient funding to make a place for a victim not only did so, but brought medical care in for her since it was too dangerous for her to leave. Her husband had kicked her so severely that she had internal injuries, and he was actively searching for her. The shelter worked to obtain

<sup>280</sup> Interview with Shelter, City D, 4 November 2011.

<sup>281</sup> See explanation of maternal centers in footnote 11.

<sup>282</sup> In 2012, the Ministry of Labour, Social Protection and Family began allocating funding to maternal centers. In order to benefit from the funding, maternal centers became public institutions, losing their independent status as NGOs. Email from Women’s Law Center, 3 September 2012, on file with the authors. At present, there is no legal mechanism that would enable the state to fund shelters solely operated by NGOs. However, the Ministry of Labour, Social Protection and Family has recently developed a Law on Accreditation of Social Services (in force since June 2012) and is developing a draft law on Procuring Services. Thus, a mechanism may be developed so as to enable the state to procure services from service providers irrespective of their status as NGO or public institution. Email from Women’s Law Center, 24 September 2012, on file with authors.

<sup>283</sup> Interview with Maternal Center, City E, 18 November 2011.

<sup>284</sup> Interview with Maternal Center, City C, 16 November 2011.

<sup>285</sup> Interview with Shelter, City D, 7 November 2011.

<sup>286</sup> Interview with Maternal Center, City C, 16 November 2011.

<sup>287</sup> Interview with Shelter, City D, 7 November 2011.

<sup>288</sup> Interview with Lawyer, City D, 16 November 2011.

<sup>289</sup> Interview with Maternal Center, City C, 16 November 2011.

<sup>290</sup> Interview with Maternal Center, City A, 15 November 2011.

legal documents from the victim's home country, despite the fact that the aggressor had the original documents, and the woman returned safely to her homeland.<sup>291</sup>

Despite these promising practices, there are a number of gaps in the services provided to domestic violence victims by maternal center shelters, other shelters, NGOs, and social assistants. As explained in more detail below, staff members infrequently utilize the protective order remedy and are hampered by a lack of knowledge about the benefits of the law and about the dynamics of domestic violence. For example, they may notify police without the permission of the victim. Shelters throughout Moldova are inadequately funded and lack capacity, and only one shelter is dedicated solely to victims of domestic violence.

### LOW NUMBERS OF REQUESTS FOR AND LACK OF KNOWLEDGE OF PROTECTIVE ORDERS BY SERVICE PROVIDERS

Many maternal center shelters, other shelters, NGOs, and social assistants infrequently utilize the protective order remedy for domestic violence victims. In the first year since the directives were passed and Law 45 could be fully implemented, interviews revealed that as of November 2011, the number of orders facilitated by social assistance departments and maternal centers was very low. Two maternal centers had no protective order cases.<sup>292</sup> Most social assistance departments and maternal centers had requested from three to five protective orders.<sup>293</sup> In general, NGOs have been more proactive in requesting protective orders. One NGO had "only a few" cases involving protective orders<sup>294</sup> but another NGO helped 19 victims apply for an order for protection in the first nine months of 2011.<sup>295</sup>

In a number of cases, social assistance departments have effectively used the protective order to implement Law 45. For example, a social assistant in a smaller city described a case with a victim whose husband swore at her, called her names, and threatened to drive over her and their child. The woman came to the social assistance department, and they helped her to write the request for a protective order. Within 24 hours, the court issued the order, stating that that the perpetrator must leave the house and not approach the victim for three months.<sup>296</sup> In another example, a young social assistant held a discussion with all of the women in a small village about domestic violence. Later, she was approached by a victim, who said she had been unaware that she could complain about it. The social assistant talked with her and referred her to the prosecutor who sent the application to the court and she received a protective order.<sup>297</sup>

Despite these positive examples, interviews revealed a lack of knowledge about the purpose, necessity, and benefits of protective orders.<sup>298</sup> For example, in some cases after learning of a first reported incident

<sup>291</sup> Interview with Shelter, City D, 7 November 2011.

<sup>292</sup> Interview with Maternal Center, City E, 18 November 2011; Interview with Maternal Center, City A, 15 November 2011.

<sup>293</sup> Interview with Maternal Center, City C, 16 November 2011; Interview with Multi-disciplinary Team, City I, 18 November 2011; Interview with Multi-disciplinary Team, City F, 16 November 2011; Interview with Maternal Center, City B, 14 November 2011.

<sup>294</sup> Interview with Shelter, City D, 4 November 2011.

<sup>295</sup> Interview with Shelter, City D, 7 November 2011.

<sup>296</sup> Interview with Multi-disciplinary Team, City F, 16 November 2011.

<sup>297</sup> Interview with Rayon Official, City I, 18 November 2011.

<sup>298</sup> Protective measures include: "a. Oblige the aggressor to temporarily leave the joint dwelling or to keep away from the victim's dwelling, without making any determination as to ownership or property or assets; b. Oblige the aggressor to keep away from the victim's person; c. Oblige the aggressor to refrain from contacting the victim, the victim's children or other dependants of the victim; d. Prohibit the aggressor from visiting the victim's place of work or residence; e. Oblige the aggressor, until the case is resolved, to contribute to the maintenance of his/her and the victim's children; f. Oblige the aggressor to cover the costs and damages caused by the aggressor's acts of violence, including medical expenses and the cost of replacing or repairing destroyed or damaged assets; g. Restrict the unilateral disposal of common assets; h. Oblige the aggressor to partake in a special treatment or counseling program, if the court determines this is necessary to reduce or eliminate violence; i. Establish a temporary visitation

*Footnote continued on next page . . .*

of violence, social assistants tried to stop further violent behavior by discussing it with the aggressor, seeking a protective order only if the victim was re-injured.<sup>299</sup> Not understanding that violent offenders could and should be ordered out of the home, one social assistant stated that a protective order was not helpful because the couple lived in the same house and staying away from the victim would be impossible.<sup>300</sup>

Staff members at another maternal center were skeptical of the effectiveness of a protective order, stating that the right of a person to his private property under the Constitution prevails over the requirement to provide security to a person. This concern was expressed in a number of interviews throughout Moldova<sup>301</sup> despite the fact that Law 45 explicitly states that title to a property does not change if one of the owners is temporarily evicted.<sup>302</sup> Although staff members discussed the option of a protective order with their clients, that maternal center had not applied for any protective orders. The director acknowledged that the staff needed further training to “apply the best techniques.”<sup>303</sup> In another example, a shelter employee stated that women were abusing the right to ask for a protective order in cases where the aggressor does not live with them. She said there was no risk of violence, not considering the many ways an aggressor might stalk and harm a victim with whom he does not live.<sup>304</sup>

### NOTIFICATION POLICIES ARE DANGEROUS TO VICTIMS

Although they are not explicitly required by law to notify police,<sup>305</sup> interviews revealed that many social assistants, maternal center staff, and NGO staff notify police whenever a victim identifies herself.<sup>306</sup> Notification may place a victim in greater peril because the danger to her escalates when the aggressor finds out that she has sought help. The increased danger that arises when well-intentioned service providers contact police may cause a victim to be deterred from reporting domestic violence and it will undermine her autonomy. One social assistance department stated that its first step is to notify the police, the mayor, and the social assistant for the victim’s local jurisdiction.<sup>307</sup> A maternal center staff member stated that even though the victim would say, “Please don’t tell [the police]. I have already been there and no measures were taken,” the staff tells the victim that it is important to inform the police so they can ensure security measures, “. . .and in the end she would agree.”<sup>308</sup> However, one social assistant stated, “It is up to the victim to decide if the police are involved.”<sup>309</sup> One maternal center staff member said that they called police only with the agreement of the victim. Yet, when one of their clients decided to go back to the aggressor boyfriend, the center notified the police about the possibility of violence without the client’s permission.<sup>310</sup>

... footnote continued from prior page

schedule for the aggressor’s underage children; j. Prohibit the aggressor from keeping or handling firearms.” Law 45 Chapter III Article 15. See Appendix A for complete text of Law 45.

<sup>299</sup> Interview with Rayon Official, City I, 18 November 2011.

<sup>300</sup> Id.

<sup>301</sup> Interview with Maternal Center, City E, 18 November 2011; Interview with Shelter, City D, 7 November 2011; Interview with Police, City D, 11 November 2011; Interview with Lawyer, City D, 25 April 2012; Interview with Former Police Chief, City D, 9 November 2011.

<sup>302</sup> Law 45 Chapter III Article 15(1)a.

<sup>303</sup> Interview with Maternal Center, City E, 18 November 2011.

<sup>304</sup> Interview with Shelter, City D, 7 November 2011.

<sup>305</sup> Law 45 Ch II Article 8(3) states that social assistance and family protection departments must “Collaborate with administrative bodies of the interior to identify persons inclined to commit acts of family violence;” which could be interpreted to require them to notify police if a victim comes forward.

<sup>306</sup> Interview with Maternal Center, City C, 16 November 2011; Interview with Multi-disciplinary Team, City E, 18 November 2011.

<sup>307</sup> Interview with Multi-disciplinary Team, City E, 18 November 2011.

<sup>308</sup> Interview with Maternal Center, City E, 18 November 2011.

<sup>309</sup> Interview with Shelter, City D, 8 November 2011.

<sup>310</sup> Interview with Maternal Center, City B, 14 November 2011.



## LACK OF RESOURCES AND LIMITATIONS OF SHELTERS

NGO shelters and maternal center shelters lack adequate governmental funding and support. There is only one shelter in Moldova dedicated to the needs of domestic violence victims, and its capacity has been limited due to lack of financial support. Throughout Moldova, if NGO or maternal center shelters are full, victims may be placed in community or homeless centers. Additionally, women with no children or children past the age of early childhood may find it difficult to find a shelter in their area that will accept them.

### Inadequate Funding for Shelters

Law 45 does not require the government to fund shelters for domestic violence victims.<sup>311</sup>

Interviews revealed that some maternal center shelters had no funds for an adequate nighttime security system or to keep the center adequately staffed at night and on weekends.<sup>312</sup> “The only thing we can afford is the alarm button,” said a center director. “We have requested the police commissariat to ensure the security of this place, but the reply was to have the services for one month would cost about 4,500 lei (about 370USD). We can’t afford this. Because we are a 24-hour center, we are concerned at night... There is no one that is supposed to work night shifts on this staff.” The center operates by having its social workers, psychologists, and medical assistants work night shifts, which “damages the quality of services provided... they have fewer days for cases because they have to work at night.”<sup>313</sup> A Ministry of Labour, Protection and Family official agreed that maternal centers and NGO shelters lack regular, adequate funding.<sup>314</sup>

One national shelter does not receive any government funding and, because of its limited funding, cannot currently accept victims to its full capacity.<sup>315</sup> This shelter sent a victim to Russia for two months to escape the perpetrator, partially because it lacked funding to provide adequate security.<sup>316</sup> The victim’s husband was a former boxer. Her mother-in-law helped her escape to the shelter, but the husband found her and “he cruised around the area for several days and threatened her...”<sup>317</sup> Another maternal center noted that its clients stopped receiving a monthly financial stipend when the center became supported by the rayon council.<sup>318</sup> “[The stipend] would help with their reintegration,” explained a staff member. “Usually they want to rent a room, but without money they can’t do it.”<sup>319</sup> Victims without this financial support for reintegration may be forced to return to violent aggressors. Inadequate funding affects victims negatively in other ways. One of the shelters had two lawyers on staff and could send one with victims to court to file for protective orders. Because of funding cuts, the shelter now has only one lawyer, so victims must go to court alone.<sup>320</sup>

<sup>311</sup> Law 45 places the responsibility for funding a Center on the founder of the Center and includes the possibility of joint public-and-private funding sources. Chapter II Article 10. Many Centers and NGOs receive a combination of funding from the state, their municipality, and private donors. Interview with Shelter, City D, 4 November 2011; Interview with NGO, City D, 8 November 2011. *See however* recent developments in shelter funding law and mechanisms at footnote 282.

<sup>312</sup> Interview with Maternal Center, City A, 15 November 2011; Interview with Maternal Center, City B, 14 November 2011.

<sup>313</sup> Interview with Maternal Center, City A, 15 November 2011.

<sup>314</sup> Interview with Ministry of Labour, Social Protection and Family, Chisinau, 11 November 2011.

<sup>315</sup> Interview with Shelter, City D, 7 November 2011.

<sup>316</sup> *Id.*

<sup>317</sup> *Id.*

<sup>318</sup> Interview with Multi-disciplinary Team, City B, 14 November 2011.

<sup>319</sup> *Id.*

<sup>320</sup> Interview with Shelter, City D, 7 November 2011.



A multi-disciplinary team official noted that when victims come from another rayon, authorities want to redirect them back to their home rayon for financial reasons even though they fled their homes and could be endangered if they return to the area.<sup>321</sup>

### Lack of Dedicated Shelters

There is only one NGO shelter dedicated to domestic violence victims in Moldova, and it is in Moldova's largest urban area.<sup>322</sup> As discussed on page 39, the eight maternal centers in Moldova primarily serve mothers with very young children who have no place to live, not victims of domestic violence.<sup>323</sup> Yet, they may be the nearest place of refuge for many domestic violence victims from the rayons. There is no common standard of assistance in the eight maternal centers, thus services available to domestic violence victims vary by location.<sup>324</sup> In addition, some maternal center employees lack knowledge about the specific needs of domestic violence victims. For example, one maternal center attempts mediation in cases of domestic violence.<sup>325</sup> As discussed on in footnote 184, mediation can be dangerous and harmful for victims of domestic violence.

If maternal centers and NGO shelters are full, victims of domestic violence may be referred to community centers, centers for homeless people, or to other institutions. These centers lack services for and capacity to counsel victims of domestic violence. The chief of a multi-disciplinary team in a small town described one case, saying, "This is a case involving a young teacher who was constantly abused by her husband...she was a teacher and she was hiding what the perpetrator was doing. She was ashamed. This lasted until the injuries were visible on her face...the perpetrator felt she had already disclosed [the violence], and she was afraid to stay in the house with him."<sup>326</sup> The woman was placed in the reintegration center for youth.<sup>327</sup> Additionally, to enter these types of public shelters, victims must provide several documents, which can result in a long wait and put the victim in danger of further violence.<sup>328</sup>

### Limited Shelter Capacity

Capacity in all types of shelters is severely limited in the Republic of Moldova. One maternal center staff member said that "[S]ometimes we have to turn victims away...we would refer them to other entities [in other locations]...or there will be an attempt to accommodate her with relatives."<sup>329</sup> Another shelter director spoke of crowded circumstances: "We had to try to find every possibility [to accommodate victims], even laying mats on the floor."<sup>330</sup> Another maternal center director discussed a time when they could not place a victim. It was in winter and the center was far over capacity with families sleeping in the day room.<sup>331</sup>

The capacity of the two national shelters is only 36 beds.<sup>332</sup> If maternal center capacity is added, the total is approximately 106 beds for the entire country of Moldova.<sup>333</sup> According to the United Nations, one

<sup>321</sup> Interview with Multi-disciplinary Team, City F, 16 November 2011.

<sup>322</sup> Interview with Shelter, City D, 7 November 2011.

<sup>323</sup> See explanation of maternal centers at footnote 11.

<sup>324</sup> Interview with Multi-disciplinary Team, City F, 16 November 2011; interview with Shelter, City D, 4 November 2011; Interview with Maternal Center, City A, 15 November 2011; Interview with Maternal Center, City E, 18 November 2011; Interview with Maternal Center, City B, 14 November 2011; Interview with Maternal Center, City C, 16 November 2011.

<sup>325</sup> Interview with Maternal Center, City C, 16 November 2011.

<sup>326</sup> Interview with Multi-disciplinary Team, City C, 16 November 2011.

<sup>327</sup> Id.

<sup>328</sup> Zaporojan-Pirgari, *Report on the response to domestic violence in Moldova* (2011), sec 2.3.

<sup>329</sup> Interview with Maternal Center, City E, 18 November 2011.

<sup>330</sup> Interview with Shelter, City D, 7 November 2011.

<sup>331</sup> Interview with Maternal Center, City A, 15 November 2011.

<sup>332</sup> Interview with Shelter, City D, 4 November 2011; Interview with Shelter, City D, 7 November 2011.

<sup>333</sup> The population of Moldova is 3,545,000. UN Statistics Division, [Social Indicators](#), June 2011.

dedicated shelter should exist for every 10,000 citizens.<sup>334</sup> A Ministry of Labour, Social Protection and the Family official stated that the development of social services is not the direct responsibility of the Ministry of Labour, Social Protection and the Family, but rather of the local public administrators, who “may propose a project to us or to the Ministry of Finance.”<sup>335</sup> This view is contrary to the language of Law 45, which states that the Ministry of Labour, Social Protection and the Family is, in fact, the “central public authority” responsible for providing social assistance.<sup>336</sup>

### Age Limits on Children

Women without children or women with children past the age of early childhood may have difficulty finding refuge from violence. Many maternal centers restrict admittance to women with at least one child under the age of three,<sup>337</sup> and others only admit women with a child under the age of six.<sup>338</sup> A shelter in a larger city limits the age of children to 15.<sup>339</sup> However, one maternal center psychologist stated that when domestic violence is involved, there were no age limits on children who could come to the center.<sup>340</sup> Yet, a victim with older children would likely be referred to a shelter in Chisinau or a local community center not designed for domestic violence victims.<sup>341</sup>

### SOCIAL ASSISTANTS LACK KNOWLEDGE ABOUT DOMESTIC VIOLENCE

A lack of knowledge of the dynamics of domestic violence among municipal social assistants is evident in attitudes and gaps in services. Some social assistants in the villages stated in interviews that they are unaware of Law 45.<sup>342</sup> Other social assistants blame victims for violence. One multi-disciplinary team chief noted that in one case, the victim “provoked the husband,” so he hit her with a stick.<sup>343</sup> Another maternal center director noted that social assistants “look down” on victims who have returned to the village after being in a shelter.<sup>344</sup> “Back in the village she is discriminated against verbally...because she was in the process,” stated the director.<sup>345</sup> Interviews revealed that several social assistance departments do no safety planning with victims<sup>346</sup> and some were unfamiliar with the concept of victim safety plans.<sup>347</sup> The social assistant in one multi-disciplinary team stated, “The way things are now, we have to take time from our main responsibilities to make a field trip to a case of domestic violence, which is not our main responsibility.”<sup>348</sup> The head of a multi-disciplinary team in another location stated that the quality of

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<sup>334</sup> UN Division for the Advancement of Women, [Handbook for Legislation on Violence against Women](#) (2010), Section 3.6.1.

<sup>335</sup> Interview with Ministry of Labour, Social Protection and Family, Chisinau, 11 November 2011.

<sup>336</sup> Law 45 Chapter II Article 7(2). An international human rights advisor stated that the insufficient number of shelters in Moldova is not only a material issue, but is also due to a problematic regulatory framework. It is very difficult, he noted, for a civil society-sponsored shelter to be certified and funded by the state. There is a detailed regulatory framework with many technical requirements. As a result of this and the general lack of funding, the rural areas of Moldova lack dedicated shelters for victims of domestic violence. Interview with Human Rights Advisor, City D, 10 November 2011. In addition, there is no legal mechanism that would enable the state to fund shelters solely operated by NGOs. Email from Women’s Law Center, 24 September 2012, on file with authors. See also footnote 282 for more information on recent developments in shelter funding law and mechanisms.

<sup>337</sup> Interview with Maternal Center, City C, 16 November 2011.

<sup>338</sup> Interview with Maternal Center, City B, 14 November 2011. This Center stated that it might take a woman with older children if it was summer, when there was “no school attendance problem.”

<sup>339</sup> Interview with Shelter, City D, 7 November 2011.

<sup>340</sup> Interview with Maternal Center, City E, 18 November 2011.

<sup>341</sup> Interview with Multi-disciplinary Team, City F, 16 November 2011.

<sup>342</sup> Interview with Shelter, City D, 7 November 2011.

<sup>343</sup> Interview with Multi-disciplinary Team, City G, 15 November 2011.

<sup>344</sup> Interview with Maternal Center, City C, 16 November 2011.

<sup>345</sup> Id.

<sup>346</sup> Interview with Multi-disciplinary Team, City E, 18 November 2011.

<sup>347</sup> Interview with Multi-disciplinary Team, City F, 16 November 2011.

<sup>348</sup> Interview with Multi-disciplinary Team, City E, 18 November 2011.

service given to victims “might not be very high, many things can be improved, but they work very hard.”<sup>349</sup>

Law 45 requires each social assistance department to designate a specialist within the department to handle domestic violence cases.<sup>350</sup> However, interviews revealed that most departments have not hired new and specially-trained individuals for this task. Domestic violence cases are usually handled by the social assistance professional specializing in child abuse<sup>351</sup> or by the social assistant in charge of trafficking.<sup>352</sup> In addition, social assistants share the responsibility, with police, of monitoring cases of family violence in the area.<sup>353</sup> When a protective order is issued, they are required to collaborate with the police in notifying the aggressor of the protective order and its application.<sup>354</sup> These crucial duties are best accomplished by specially-trained individuals who have sufficient time to devote to the tasks. As another social assistant said, “I do my best to pay due attention to domestic violence issues, but we have lots of responsibilities....”<sup>355</sup>

### HOTLINE NOT ALWAYS AVAILABLE TO VICTIMS

An NGO-operated hotline, the “Women’s Trust Line,” is open for only 12 hours each day.<sup>356</sup> Hotlines provide a crucial service in Moldova because of its many remote villages. To illustrate, in the northern region of the country, advocates recalled that a hotline funded by the government of Norway had operated five years ago for just six months, but women still remembered the number.<sup>357</sup>

Moldova’s national hotline receives hundreds of calls from domestic violence victims each year.<sup>358</sup> Many incidences of domestic violence, however, happen after eight in the evening - after the hotline is closed.

### WORK WITH AGGRESSORS

Although Law 45 requires programs to rehabilitate aggressors,<sup>359</sup> to date, Moldova has only one maternal center with an NGO-affiliate that specializes in aggressor rehabilitation. This NGO began to work with aggressors after they noticed how often victims returned to their aggressors. The same psychologist works separately with both victims and aggressors. Although the maternal center staff knows this practice is not ideal, they reason that there are no other services for aggressors in the rayon.<sup>360</sup> The maternal center / NGO is starting a batterers’ intervention program, the first in Moldova, in a separate location.<sup>361</sup> Planning is well under way. They have received the support of the rayon council and hope to open the

<sup>349</sup> Interview with Multi-disciplinary Team City F, 16 November 2011. Interviewees suggested that the high turnover in social assistants may be due to their low wages and large workload. Interview with Shelter, City D, 4 November 2011. Additionally, facilities for meeting victims are often far from ideal. Although best practices show that victim confidentiality and privacy are important elements of an effective response to domestic violence, interviews revealed that there are no crisis centers in many rural areas, and victims must sometimes meet the social assistant in a public setting. Arizona Coalition Against Domestic Violence, [Best Practices Manual for Domestic Violence Programs](#), 2000, p. 75-76. Interview with Multi-disciplinary Team, City G, 15 November 2011; Interview with Maternal Center, City C, 16 November 2011.

<sup>350</sup> Law 45 Chapter II Article 7(4).

<sup>351</sup> Interview with Multi-disciplinary Team, City F, 16 November 2011; Interview with Multi-disciplinary Team, City E, 18 November 2011.

<sup>352</sup> Interview with Multi-disciplinary Team, City C, 16 November 2011.

<sup>353</sup> Law 45 Chapter II Article 8(6)l.

<sup>354</sup> Law 45 Chapter III Article 15(2).

<sup>355</sup> Interview with Multi-disciplinary Team, City A, 15 November 2011.

<sup>356</sup> Interview with NGO, City D, 8 November 2011. The hotline is open 7 days a week between the hours of 8 AM and 8 PM.

<sup>357</sup> Interview with Maternal Center, City E, 18 November 2011.

<sup>358</sup> From January - October 2011, the hotline received 600 calls from victims of domestic violence. Interview with NGO, City D, 8 November 2011.

<sup>359</sup> Law 45 Chapter II Article 10(8).

<sup>360</sup> Interview with Maternal Center, City E 18 November 2011.

<sup>361</sup> Id.

new center in fall of 2012.<sup>362</sup> Currently, the center / NGO conducts individual counseling sessions in aggressors' homes in three northern rayons.<sup>363</sup>

## LEGAL ASSISTANCE

Despite efforts to provide legal assistance to victims of domestic violence, victims are not receiving adequate legal assistance. The legislation that provides free legal assistance is limited, paralegals lack knowledge of the dynamics of domestic violence, NGOs are not accessible to victims country-wide, and governmental financial support for legal assistance is inadequate. These barriers to legal assistance harm victims who are less likely to receive protective orders if they submit them on their own.

Law 45 guarantees free legal assistance to all domestic violence victims in Moldova, pursuant to legislation on legal assistance guaranteed by the state.<sup>364</sup> Despite this guarantee, domestic violence victims rarely receive free legal assistance. The law on state-guaranteed legal aid requires victims to meet financial eligibility requirements and be party to a legal case.<sup>365</sup> The law does not apply to domestic violence victims who are applying for a protective order before having started a civil or criminal case.<sup>366</sup>

Although paralegals have been trained in domestic violence and work with social assistants, mayors, and police, they are not yet linked to the National Referral Mechanism and thus do not regularly receive referrals to domestic violence victims.<sup>367</sup> Additionally, interviews revealed that paralegal teams lack knowledge about domestic violence. A paralegal project coordinator stated that when his team encountered situations of domestic violence, "We advise our people not to get too deeply involved in these cases because they don't have enough competence."<sup>368</sup>

The few NGOs that provide free legal assistance are not located countrywide but rather are concentrated in urban areas.<sup>369</sup> In 2010, one NGO provided free legal assistance in 50 cases of domestic violence.<sup>370</sup> The deputy director of that NGO explained the importance of legal assistance for domestic violence victims. "...If she doesn't have a lawyer... [she will] just stay with [the aggressor] because she doesn't have any other options."<sup>371</sup>

The NGO deputy director described the ways in which lawyers help victims: "Even the process of filing a protective order may seem simple at first, but for victims of domestic violence it could be difficult, and they may need assistance to draft the request....The service of the lawyer is not just filing papers. The lawyer goes to court and represents her there. The lawyer needs to check when the protection order was issued, how it was registered with the police, how it is being implemented. And, the lawyer needs to provide relevant information to instruct the victim on how to act."<sup>372</sup> Legal assistance lawyers described other important advocacy services to victims: filing for divorce, intervening with police on behalf of the victim, and accompanying the victim to pick up her clothes from her residence.<sup>373</sup>

<sup>362</sup> Id.

<sup>363</sup> Email from Women's Law Center, 10 August 2012, on file with authors.

<sup>364</sup> See Law 45 Chapter III Article 11(5) and Law on state-guaranteed legal aid at <http://www.cnaigs.md/en/legal-framework.html>.

<sup>365</sup> See Law on state-guaranteed legal aid at <http://www.cnaigs.md/en/legal-framework.html>. The law went into force in January of 2012.

<sup>366</sup> See Law on state-guaranteed legal aid at <http://www.cnaigs.md/en/legal-framework.html>, Article 19.

<sup>367</sup> Interview with Paralegals, City D, 8 November 2011.

<sup>368</sup> Interview with Paralegal Project Coordinator, City D, 8 November 2011.

<sup>369</sup> Zaporozhan-Pirgari, *Report on the response to domestic violence in Moldova* (2011), sec. 2.3, Vidaicu, *Domestic Violence Against Women in Moldova*, p. 2.

<sup>370</sup> Interview with NGO, City D, 8 November 2011.

<sup>371</sup> Interview with NGO, City D, 8 November 2011.

<sup>372</sup> Interview with NGO, City D, 8 November 2011.

<sup>373</sup> Interview with Lawyers, City D, 10 November 2011.

While the law allows victims to request civil protective orders, a judge is more likely to issue a protective order if the request is submitted with the aid of police or a lawyer. Judges stated that if a victim has assistance in bringing a request for a protective order, it will be better argued and contain more evidence.<sup>374</sup> The lack of such assistance or legal representation may result in denial or delay of protection.<sup>375</sup> A judge stated:

It is more complicated when a victim comes herself to get the protective order because the judge cannot ask her to collect the evidence. We have to wait for a hearing until the police can get involved to get required evidence.<sup>376</sup>

In one case, a victim's self-application for a protective order was denied because the judge ruled that the application must conform to other applications for protective orders.<sup>377</sup> For victims pursuing a civil protective order on their own, no information is available at the courts about the protective order process, court administrative staff are not trained to help victims, and judges are not required by the law to provide any advice to a victim.<sup>378</sup> The victim was able to amend her petition, but it was several days before her case was re-examined. During this time, she was left without protection.<sup>379</sup>

The United Nations Population Fund supported the creation of a network of lawyers to assist in domestic violence cases in seven cities; however, this project ended in 2011.<sup>380</sup> A legal assistance office in a large urban area receives no support from the Moldovan government and is funded entirely by international donors.<sup>381</sup>

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<sup>374</sup> Interview with Judges, City D, 11 November 2011; Interview with Judge, City D, 9 November 2011.

<sup>375</sup> Interview with Judge, City D, 9 November 2011.

<sup>376</sup> Id.

<sup>377</sup> Id. See Civil Procedure Code Article 318<sup>2</sup>, Content of Request, which states: "The request for the application of protective measures shall specify the circumstances of the act of violence, its duration, suffered consequences and other circumstances indicating that the application of protective measures is needed."

<sup>378</sup> Id. See also footnote 228 on the lack of specialized courts in Moldova.

<sup>379</sup> Interview with Judge, City D, 9 November 2011.

<sup>380</sup> Zaporozhan-Pirgari, *Report on the response to domestic violence in Moldova* (2011), sec. 2.3.

<sup>381</sup> Interview with Lawyer, City D, 19 November 2011.



## HEALTH CARE INSTITUTIONS

Health care institutions play an important role in responding to cases of domestic violence and ensuring that victims are treated in a way that promotes their health and safety. Health care professionals are first responders, an important source of referrals for victims, and authors of crucial medical records. Forensic doctors, in particular, have an important role in ensuring that victims' injuries and the cause are documented accurately because prosecutors rely upon their reports in determining how to charge a criminal case. Despite a victim's right to confidentiality under Law 45, health professionals are required to report all cases of domestic violence to the police, creating additional obstacles for victims seeking health care.<sup>382</sup>

### HEALTH CARE PROFESSIONALS LACK KNOWLEDGE ABOUT DOMESTIC VIOLENCE CASES AND THE ABILITY TO RESPOND EFFECTIVELY

Health care providers, in general, lack knowledge about domestic violence.<sup>383</sup> A former NGO director identified family doctors as the "weak link" in the multi-disciplinary teams because they think they should intervene "only occasionally."<sup>384</sup> Interviews revealed that many family doctors and other health care professionals are not able to identify domestic violence cases or effectively respond to them.<sup>385</sup> "We don't deal with this. We have little time to deal with this," stated a family doctor.<sup>386</sup> Health care providers' lack of knowledge and attitudes present a substantial barrier to a victim receiving adequate care.

A Ministry of Health official agreed:

The first thing I see as necessary from the perspective of the Ministry of Health is to train the medical workers. Very often they are unaware of what domestic violence is. It is very important to train and sensitize them because very often in villages, doctors are aware of existing violence in the family, but they think it is normal and don't think they need to do anything about it.<sup>387</sup>

An NGO director stated that family doctors "very seldom" refer victims to the NGO because domestic violence happens in their own families so they "don't react" to it.<sup>388</sup> One family doctor stated, "I think [the government] has much bigger issues to address than domestic violence."<sup>389</sup> Uninformed doctors will not compile an adequate medical report, thus impeding a victim's current and future access to justice. A

<sup>382</sup> Law 45 Chapter II, Article 8(5)b and c. Law 45 requires medical institutions "of all types and levels" to report cases of domestic violence, through medical employees, to the police or, in the case of abused children to the guardianship authority, to "ensure medical counseling and assistance for victims." For adult victims, best practices support such collaborations only on request of the victim.

<sup>383</sup> Interview with Forensic Doctor, City D, 9 November 2011; Interview with Physician A, City D, 7 November 2011; Interview with Physician B, City D, 7 November 2011.

<sup>384</sup> Interview with Former NGO Director, City D, 7 November 2011.

<sup>385</sup> Interview with Physician A, City D, 7 November 2011; Interview with Physician B, City D, 7 November 2011. An official from the Ministry of Health confirmed that they have not organized any training on domestic violence and Law 45 because they were waiting for the instructions to be approved by the Ministry of Labour, Social Protection and Family. Interview with Ministry of Health, Chisinau, 4 November 2011. (The Ministry of Health released instructions for health care professionals in February of 2012. E-mail from Women's Law Center, August 2012, on file with authors.) However, one physician member of a multi-disciplinary team in the rayons described a two-week training on domestic violence, including techniques to identify victims, for 25 local doctors. Interview with Physician on Multi-disciplinary Team, City I, 18 November 2011. Another high-level staff member of an urban hospital noted that there have been several trainings on domestic violence organized by the World Health Organization. Interview with Hospital Staff Member, City D, 16 November 2011.

<sup>386</sup> Interview with Physician A, City D, 7 November 2011.

<sup>387</sup> Interview with Ministry of Health, Chisinau, 4 November 2011.

<sup>388</sup> Interview with Shelter, City D, 7 November 2011.

<sup>389</sup> Interview with Physician A, City D, 7 November 2011.



Ministry of Health official demonstrated her understanding of this and stressed the importance of the medical report:

...even when the victim seeks medical assistance for the first time for injuries, [the physicians] should put detail into the medical file. Even if she doesn't want to cooperate in the beginning, this information stays in the file. If in the future she is willing to cooperate, this information could serve law enforcement.<sup>390</sup>

### **LAW 45'S REQUIREMENT THAT HEALTH CARE PROFESSIONALS REPORT DOMESTIC VIOLENCE TO POLICE IS AN OBSTACLE FOR VICTIMS**

Law 45 states that all medical employees are required to report cases of domestic violence to the guardianship authority and to the police.<sup>391</sup> Interviews and other research show that this requirement may deter victims from seeking medical treatment.<sup>392</sup> They may avoid medical assistance if they do not want the criminal justice system to intervene. Further, victims' confidence in the medical profession is an important determinant of whether or not they will seek help. A hospital director stated that even if a victim was not willing to declare that her husband caused her injuries, he and his physicians were under a legal obligation to report the case to the police.<sup>393</sup> He said, "We try to get the patient to trust us and tell us the story," adding that "[t]he confidentiality agreement between patients and doctors is in the file, so this makes them trust us."<sup>394</sup> The conflict between medical confidentiality agreements and the mandatory reporting requirement of Law 45 leaves domestic violence victims unsure of the consequences of seeking help and likely to seek medical help only as a last resort.

### **FREE MEDICAL CARE NOT AVAILABLE FOR ALL VICTIMS OF DOMESTIC VIOLENCE**

Victims of domestic violence often do not have medical insurance and cannot afford to pay for health care.<sup>395</sup> Some shelters provide basic medical examinations, but the Moldovan government pays only a small portion of the costs.<sup>396</sup> Uninsured victims bear the burden of costs of hospitalization, surgeries, and medication.<sup>397</sup> In many cases, dedicated Moldovan professionals are working together to find ways to obtain health care for uninsured victims. A maternal center director described a case where the lack of medical insurance nearly proved fatal for a domestic violence victim:

...there was a victim who had been raped. [The police officer] had this domestic violence victim taken to the hospital and there she spent two days....The doctors were not able to keep her any longer because she lacked insurance...we worked together to support this person....It was risky. She had a fever, injuries, but we had no other choice - we had to provide her with a place. She had lots of

<sup>390</sup> Interview with Ministry of Health, Chisinau, 4 November 2011.

<sup>391</sup> Law 45 Chapter II Article 8(5).

<sup>392</sup> Interview with Forensic Doctor, City D, 9 November 2011; Interview with Physician B, City D, 7 November 2011; Interview with Hospital Staff Director, City D, 16 November 2011. The European Court of Human Rights has stated that respecting the confidentiality of health data "is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general. Without such protection, those in need of medical assistance may be deterred from revealing such information of a personal and intimate nature as may be necessary in order to receive appropriate treatment and, even, from seeking such assistance, thereby endangering their own health...." ECHR, *Z v Finland*, Appl. No. 22009/93, 25 February 1997, para. 95.

<sup>393</sup> Interview with Hospital Staff Director, City D, 16 November 2011.

<sup>394</sup> *Id.*

<sup>395</sup> Interview with Maternal Center, City E, 18 November 2011; Interview with Maternal Center, City A, 15 November 2011; Interview with Hospital Staff Director, City D, 16 November 2011. A human rights advisor reported that the Roma people are three times more likely to have no insurance than non-Roma. Interview with Human Rights Advisor, City C, 10 November 2011.

<sup>396</sup> Interview with Shelter, City D, 4 November 2011.

<sup>397</sup> Interview with Physician B, City D, 7 November 2011. Only emergency treatment is free to all citizens. Interview with Hospital Staff Director, City D, 16 November 2011.



infected bruises and her medical health was worsening...the second time her fever went higher and again she spent three days in the hospital and was brought back here after that still needing medical services. She needed medicine, serious antibiotics, and she was not given that at the hospital because she had to pay...We knew her condition was bad and we decided to save her...thank God she got better.<sup>398</sup>

## FORENSIC SYSTEM CREATES BARRIERS TO VICTIM SAFETY AND OFFENDER ACCOUNTABILITY

Forensic examinations can be difficult for victims to obtain due to cost and limited access in rural areas.<sup>399</sup> Forensic physicians lack knowledge about domestic violence, and the forensic system of categorizing injuries does not include an assessment of risk to the victim, with the result that cases with dangerous injuries are not pursued by prosecutors and police.

Interviews revealed that the cost of obtaining an examination is burdensome for victims, particularly those in rural areas who must incur additional travel costs.<sup>400</sup> In one case, a hospitalized victim was asked by the police to travel 40 km to get forensic documentation even though she did not have the money or the physical ability to travel.<sup>401</sup> A recent and commendable effort by forensic physicians to exempt victims of domestic violence from the fee requirement was unsuccessful.<sup>402</sup>

Interviews revealed that many forensic doctors demonstrated a lack of knowledge about the dynamics of domestic violence. For example, a forensic doctor stated that cases of severe violence might not be reported to police, especially if they were “permanent, recurrent cases of domestic violence” in clinics with high workloads.<sup>403</sup> This alarming statement indicates a dangerous bias against victims of repeated violence, when in fact such cases warrant increased attention and care. The doctor blamed victims for violence, saying, “[Victims]...need to be educated in how to behave...Victims need to be educated to know how to prevent the violence....”<sup>404</sup> If a victim goes to a forensic doctor to obtain a report for a criminal case, the doctor should report the case of violence to the police as required under Law 45. The authors remain concerned, however, as discussed on page 50, about the potential harm to victims of mandatory reporting requirements that violate their right to confidentiality and contradict their decisions not to involve the legal system.<sup>405</sup>

The classification of a victim’s injury has important consequences for prosecuting offenders. Sanctions increase with the severity of the injury.<sup>406</sup> Under Moldova’s system of injury classification, a “severe” bodily injury is indicated by an injury or damage to health accompanied by the permanent loss of one-third capacity to work.<sup>407</sup> A “less severe” bodily injury is indicated by a “prolonged” health disorder or a permanent loss of less than one-third capacity to work.<sup>408</sup> A “deliberate slight bodily injury” includes beatings or other actions that cause a “short-term health disorder or an insignificant but established loss of work capacity.”<sup>409</sup>

<sup>398</sup> Interview with Maternal Center, City A, 15 November 2011

<sup>399</sup> Forensic exams are required for criminal prosecutions. Criminal Procedure Code Article 97(1). See Appendix C. The exams may be requested by police or prosecutors or a victim may seek one on her own initiative.

<sup>400</sup> Interview with Rayon Officials, City I, 18 November 2011.

<sup>401</sup> Interview with Victim, City G, 15 November 2011.

<sup>402</sup> Interview with Forensic Doctor, City D, 9 November 2011.

<sup>403</sup> Id.

<sup>404</sup> Id.

<sup>405</sup> In some cases, victims may go to forensic doctors on their own initiative solely to make a record of the domestic violence but are not yet ready to involve police.

<sup>406</sup> Criminal Code Article 201.

<sup>407</sup> Criminal Code Article 151(1). See Appendix C for full text of Criminal Code Article 151(1).

<sup>408</sup> Criminal Code Article 152(1). See Appendix C for full text of Criminal Code Article 152(1).

<sup>409</sup> Contravention Code Article 78.

None of the qualifications include evidence of repeat violence or an escalation in violence, important elements in assessing risk and establishing elements of a possible criminal offense. Typical domestic violence injuries are thus often categorized as less severe. For example, a shelter worker noted that when a victim came in with teeth knocked out, the forensic doctor assessed it as a “slight” injury.<sup>410</sup> Another victim’s concussion qualified as a “slight” injury, with the result that the protective order did not direct the aggressor to leave the home.<sup>411</sup> In another case, a “brain trauma” was classified as a “slight” injury despite requiring 10 days of hospitalization and despite numerous prior incidents of violence. As a result of the classification, no charges were brought in that case.<sup>412</sup>

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<sup>410</sup> Interview with Shelter, City D, 7 November 2011.

<sup>411</sup> Interview with Multi-disciplinary Team, City G, 15 November 2011.

<sup>412</sup> Interview with Victim, City G, 15 November 2011.

## RESPONSE TO CHILDREN

Shelters do not always report cases of violence against children to the police, and, although child protection matters are handled by Social Assistance and Family Protection Departments in every rayon throughout Moldova, few protective orders under Law 45 have been issued on behalf of children. In addition, safe sites for supervised visitation are needed to prevent further abuse by aggressors in domestic violence cases.

### NON-COMPLIANCE WITH REQUIREMENT TO REPORT VIOLENCE AGAINST CHILDREN AND UNDERUSE OF PROTECTIVE ORDERS

While Law 45 requires several categories of professionals, including shelter employees, to report violence against children,<sup>413</sup> shelters do not consistently report dangerous cases. For example, shelter employees in a large urban area described a case where a protective order under Law 45 was in place to protect children from an abusive father. The oldest daughter and her mother told shelter staff about several previous incidents of violence and sexual abuse, including hanging the girl from a ceiling light and beating her and forcing her to give the aggressor a full-body massage behind locked doors. The staff reported that they understood that the violence was severe and long-lasting violence. Yet, they allowed the girl to go back home when the protective order expired, even though she protested, told them she had attempted suicide, and said that she wanted to start a new life.<sup>414</sup> The only precaution they took was to advise the mother to observe the girl closely. The girl eventually told her mother that the father had been raping her since she was nine years old. With the evidence of rape, criminal charges were filed.<sup>415</sup>

Although the shelter staff was aware that they were required to report cases of violence against children,<sup>416</sup> the staff did not call the police after the first reports of violence because they said the mother hoped the husband would change his behavior. The father remains in jail, and a protective order, now issued under Article 215<sup>1</sup>, has been extended several times.

In another case, an NGO lawyer appointed by the Guardianship Authority to represent a child did not report or request the immediate removal of the girl from a dangerous situation.<sup>417</sup> The mother of the girl had been withdrawn as legal representative because she testified against her daughter in the criminal case against the girl's father. He had been molesting the girl from age 5 to 9. When she was age 9 to 11 he raped her at least twice a week. He was convicted and sentenced to 12 years, but was released from jail and resumed living with the family.<sup>418</sup> The staff worked with the mother to convince her to request a protective order for her daughter.<sup>419</sup>

<sup>413</sup> Social assistants are charged with reporting and protecting the rights and interests of minor victims (Law 45 Chapter II Article 8(3)f); centers must report cases of family violence to the police (Law 45 Chapter II Article 10(3)e); teachers must immediately report cases of domestic violence against children to the police and to the Guardianship Authority (Law 45 Chapter II Article 8(4)d); and the police are required to notify the Guardianship Authority and tutorship authorities in cases of minor victims of domestic violence (Law 45 Chapter II Article 8(6)c). Prosecutors have internal regulations (Order 707) that require them to immediately inform the Child Protection Department of any cases they have which involve children. Interview with Prosecutor, City D, 8 November 2011.

<sup>414</sup> Interview with Shelter, City D, 8 November 2011.

<sup>415</sup> Id.

<sup>416</sup> Id. See Law 45 Chapter II Article 10(3)e.

<sup>417</sup> NGOs representing children are required to protect them under Family Code Article 53. See Appendix E for full text of Family Code Article 53.

<sup>418</sup> The interviewee stated that the aggressor was released from jail by the appeals court because his actions were re-qualified. Interview with NGO, City D, 8 November 2011.

<sup>419</sup> In a criminal case, victims must request the order for protection under Article 215<sup>1</sup> of the Criminal Procedure Code. Interview with NGO, City D, 8 November 2011.

Despite Moldova's child protection system, interviews and statistics confirm that protective orders under Law 45 are not often requested on behalf of children.<sup>420</sup> The municipality of Chisinau was Guardianship Authority for children in 180 domestic violence cases in the first 10 months of 2011,<sup>421</sup> yet it did not initiate any applications for protective orders during that time.<sup>422</sup> A rural rayon covering 37 mayoralities and 55 villages had not initiated or heard of cases of protective orders on behalf of children.<sup>423</sup> Another rayon near a large urban area had not requested any protective orders which were only on behalf of a child.<sup>424</sup> One national children's center "had a part" in initiating only eight protective orders on behalf of children since 2010.<sup>425</sup>

## SUPERVISED VISITATION REGULATIONS AND FACILITIES NEEDED

Interviews revealed that in cases of domestic violence, visitation with a violent parent is likely to be allowed.<sup>426</sup> Demonstrating the attitude that parental rights take priority over safety and accountability, the chief of a multi-disciplinary team stated, "...we can't prevent him from seeing his child because he might have changed his behavior."<sup>427</sup>

There are no facilities for supervised visitation in Moldova, which results in dangerous situations for children and mothers. One multi-disciplinary team described an ongoing case where the team applied for a protective order on behalf of a mother and her child. The aggressor had beaten the mother, made threatening phone calls, and sent threatening emails to her. He followed the mother and child and threatened to drive over both of them. He called the mother names and swore at her. She was badly frightened and was afraid to cross the street because of his threats. The protective order banned him from approaching the woman and her home and from threatening her. The aggressor was allowed to visit the child in the home twice a month in the presence of a social worker from the village until the court decided parental rights. According to lawyers for the mother, the aggressor continues to show aggressive behavior in the victim's house, and uses every visit as an opportunity to interact with the victim.<sup>428</sup>

A shelter director agreed that supervised visitation is an important element of protection:

In many cases there is clear evidence of violence against the victim but not against the children. In this case the protective order is difficult to apply because he has the right to see the children....So even if the victim is placed in the center, the aggressor very often manipulates the victim because he has the right to see the children. It would be good if the child protection would arrange a space where

<sup>420</sup> Cases involving children are often first referred to a community social assistant. They may identify and monitor a case but do not have the power to make a custody determination. A Guardianship Authority has the power to determine custody. A Guardianship Authority may be assigned at one of several levels: the Ministry of Labour, Social Protection and Family; the rayon level; and the local council. Interview with NGO, City D, 8 November 2011. Each sector of Chisinau has its own Department of Child Rights Protection. Each of these Departments is a Guardianship Authority. Interview with Municipal Department of Child Rights, Chisinau, 10 November 2011.

<sup>421</sup> Interview with Municipal Department of Child Rights, Chisinau, 10 November 2011.

<sup>422</sup> Id.

<sup>423</sup> Interview with Rayon Child Protection Specialist, City B, 14 November 2011.

<sup>424</sup> Interview with Multi-disciplinary Team, City F, 16 November 2011.

<sup>425</sup> Interview with NGO, City D, 8 November 2011.

<sup>426</sup> Interview with NGO, City D, 8 November 2011; Interview with Shelter, City D, 7 November 2011; Interview with Multi-disciplinary Team, City A, 15 November 2011. Law 45 Chapter III Article 15(1)i. includes "Establish a temporary visitation schedule for the aggressor's underage children" as one of the protective measures. If the child is abused and is over the age of 10 and wants visitation with the abusive parent, the aggressor may be required to have psychiatric counseling as a condition of the visitation. Interview with Municipal Department of Child Rights, Chisinau, 10 November 2011. Law 45 Chapter III Article 15(1)h includes, "Oblige the aggressor to partake in a special treatment or counseling program, if the court determines that this is necessary to reduce or eliminate the violence" as another protective measure.

<sup>427</sup> Interview with Multi-disciplinary Team, City A, 15 November 2011.

<sup>428</sup> Interview with Multi-disciplinary Team, City F, 16 November 2011.

the aggressor could see the children without seeing the victim. Because such services are not available, the aggressor can use the right to see the children as a way to see the victim.<sup>429</sup>

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<sup>429</sup> Interview with Shelter, City D, 7 November 2011.



## CONCLUSION

This report examines the laws, policies, and practices that constitute the Moldovan government's response to the pervasive and devastating problem of domestic violence. Moldova was one of the first countries to recognize and document the link between human trafficking and domestic violence, and to act to extend its National Referral System to victims of domestic violence, welcoming them into the national service center. It is also one of the first countries in the region to address domestic violence in both the civil and criminal systems. In addition, the provisions of Law 45 codify a comprehensive multi-sector response to victims. The authors commend the government of the Republic of Moldova for enacting this legislation.

As this report shows, monitoring the implementation of domestic violence legislation is an important tool for identifying gaps and weaknesses in law, policy, and practice that have had unintended negative consequences for victims. In Moldova, there are critical gaps and weaknesses in both the language of the law and its implementation that undermine not only the intent of the law, but, more importantly, have devastating effects on victims and their families. As a result of these gaps and weaknesses, many domestic violence victims throughout Moldova remain unprotected and without services.

The justice system has taken important steps to improve its response to domestic violence, but serious problems remain. Most notably, despite pervasive domestic violence in Moldova and the need for legal remedies to address it, very few protective orders have been issued in the two years since Law 45 became enforceable. Few prosecutions have gone forward under the recent criminal law on domestic violence. While police have made some commendable efforts to implement the law, they often lack sensitivity to victims and turn them away, do not apply for protective orders on their behalf, and do not investigate cases which merit criminal prosecution. Prosecutors as well as police have been too slow to utilize the criminal law on domestic violence against aggressors. The judiciary often delays the issuance of protective orders by requiring evidence that takes days or weeks to obtain, even after the aggressor is notified that the victim is seeking protection.

Moldova's efforts to develop a comprehensive multi-sector response to victims are admirable. Police, social assistants, health care professionals, and other relevant professionals form a team based on the particular needs of a victim and her family. These multi-disciplinary teams have provided effective advocacy and services in many instances. Many professionals, however, demonstrated a lack of understanding of the dynamics of domestic violence and sufficient knowledge of the provisions of Law 45 and its supporting legislation to implement the laws appropriately. The lack of continuous and regular training on these issues is a barrier to effective implementation of the domestic violence legislation. The inadequate numbers of shelters and lack of other comprehensive services for domestic violence victims impair their ability to achieve immediate and long-lasting safety.

Importantly, adequate funding from the Moldovan government is critical to implementing all aspects of the law, including training for all sectors, collecting comprehensive statistics on domestic violence, providing victim services, particularly shelters, and raising public awareness of the problem of domestic violence and the ways in which it is addressed by law.

In conclusion, the authors refer the government of the Republic of Moldova to the following section of this report where we offer concrete recommendations to address these and other challenges to achieving victim safety and offender accountability.





## RECOMMENDATIONS

### PRIORITY RECOMMENDATIONS

- Amend Law 45 to require the government to fully fund dedicated shelters and crisis centers for victims of domestic violence and all of their minor children throughout the country.
- Create an emergency protective order that can be issued ex parte through the civil system.
- Amend Civil Procedure Code Article 313<sup>3</sup> to provide that a victim's statement alone is sufficient to obtain a protective order and to allow protective orders to be issued if there is a fear of imminent physical harm.
- Amend Civil Procedure Code Article 318<sup>5</sup> to allow a protective order to be extended if the victim is in fear of repeated violence.
- Amend Law 45 and the Criminal Code to criminalize every violation of a protective order.
- Dedicate resources for NGOs to strengthen the capacity of civil society, recognizing their important role in protecting victims, and enabling them to work in partnership with the government to address victim needs.
- Preserve confidentiality of victims by eliminating notification requirements and policies for all professionals, except for cases where weapons are used, where victims are especially vulnerable, such as the intellectually or physically challenged, or where children are subjects of physical abuse. It is particularly important that victims have confidence in the privacy of their relationship with their physicians and other health care providers.
- Create and implement policies that require front-line police officers to act aggressively to protect victim safety and ensure accountability for aggressors by refraining from issuing warnings in lieu of additional action, detaining violent aggressors as legally allowed, and requesting protective measures in accordance with victim requests.
- Ensure that police are trained in best practices in their response to domestic violence, such as how to carry out a complete investigation and make a complete report of the incident. Ensure that police know the factors for a risk or danger assessment and how to incorporate knowledge of prior incidents into case profiles.
- Ensure that police explain the order for protection to the aggressor and inform him of the consequences if he violates it. Provide police with tools to ensure the eviction of the aggressor, if eviction is ordered. Ensure that police offer victims concrete information for safety planning and reporting if the aggressor violates the protective order.
- Ensure that prosecutors give high priority to domestic violence cases, aggressively prosecute them, and decide whether to pursue criminal charges in a timely manner to avoid delay and additional danger to victims.
- Ensure that judges comply with the 24-hour deadline for issuing protective orders in all cases.
- Eliminate legal provisions, including Article 11(4) of Law 45 and Criminal Procedure Code Article 276, which allow for or mandate mediation or conciliation in domestic violence cases.
- Repeal Criminal Procedure Code Article 276(5) that requires criminal cases to be stopped when the parties reconcile.
- Provide and fund mandatory and regular training that reflects internationally-recognized best practices for judges, police, prosecutors, social assistants, health care workers, and members of the multi-disciplinary teams on the dynamics of domestic violence and coercive control, in collaboration with women's NGOs.

### Parliament

- Sign and ratify the Council of Europe Convention on prevention and combating violence against women and domestic violence (the Istanbul Convention).
- Expand the scope of Law 45 to protect victims of domestic violence who have never lived with their aggressor but who are in or have been in an intimate relationship with him.
- Amend Criminal Procedure Code Article 215<sup>1</sup> so that the prosecutor may request and the court may issue on its own initiative a protective order during a criminal trial. In criminal cases,

prosecutors and courts should recognize when victims are in danger and should be able to implement protective measures on a victim's behalf.

- Amend Law 45 to redefine psychological, spiritual, and economic violence to ensure that it includes only acts that threaten the victim with physical harm, or cause fear of such harm, or constitute serious coercive or controlling behaviors.<sup>430</sup> Take steps to ensure that definitions of psychological, spiritual, and economic violence are enforced in a manner that takes into account the context, severity, the use of power and control, repetition, and harassment in each case.
- Amend Law 45 to require the victim's consent to the application for a civil protective order unless the victim is a minor or an especially vulnerable adult, such as a mentally or physically challenged adult.
- Expand the scope of the protective order to specifically prohibit an aggressor from approaching the children's school, recreation facilities, or place of work, victim's or children's social contacts, or other relevant places the victim and children may frequent.
- Amend the Criminal Code to add provisions against stalking and harassment.
- Amend Criminal Procedure Code Article 215<sup>1</sup> to include prohibitions against stalking and harassment.
- Amend Law 45 to increase the duration of protective orders to at least one year that will stay in place unless and until a judge concludes, following a hearing requested by the respondent, that the protective order should be cancelled.
- Ensure that limited resources for services to victims of domestic violence are prioritized over resources for aggressors.
- Ensure that the national hotline is adequately funded to keep it operational at all times.
- Ensure that victims of domestic violence obtain free legal aid regardless of income and including during the protective order process as well as during criminal or civil proceedings.
- Amend Law 45 to include a provision that allows the judge flexibility in ordering other measures that address the needs of the victim and her family.
- Develop a fair and balanced accreditation process and impartial funding mechanism to encourage the development of women's NGOs.
- Establish an independent monitoring mechanism to regularly collect data and analyze the implementation of the domestic violence legislation in order to identify and rectify unintended consequences of laws that are harmful to victims.
- Establish an independent and confidential reporting mechanism for victims to file complaints about the legal system response. Establish and carry out an independent review and sanction process for cases of negligence, corruption, or incompetence by legal actors.
- Amend the Rules of Evidence to allow women charged with or in prison for killing or injuring aggressors in self-defense to use psychologist or other expert testimony on the effects of long-time battering and to appeal their sentences.

### **Ministry of Internal Affairs**

- Develop an easy-to-use order for protection form for victim use that specifies the legal requirements for a protective order and the measures that can be obtained.
- Allow immediate access by police and courts to administrative and criminal prior offense databases.
- Systematically track and release statistics on domestic violence, including numbers of protective orders requested, issued, and denied, their terms, and violations, as well as information on

<sup>430</sup> Coercive control can be described as "an act or pattern of acts by which an adult partner seeks to coerce and/or control another by intent, design or consequence. Coercion includes an act or a pattern of acts of assault, sexual coercion, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten a partner. Control includes a range of acts designed to make a partner subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour." Against Violence & Abuse (AVA), AVA's Response to Cross-Definition of Domestic Violence: A Consultation, 4, on file with authors.

extensions, convictions, and sentencing. Statistics should be disaggregated by sex and include information on relationship of the victim to the aggressor.

- Establish specialized police units and dedicated police officers trained on the dynamics of domestic violence.
- Prioritize training of police, prosecutors, and judges on the dynamics of domestic violence, power and control, and the unique needs of victims.
- Expand the police incident report form to include questions on the existence of protective measures, probation, warrants, prior convictions; as well as risk and lethality assessment questions, victim contact information, self-defense practice points, and considerations for predominant aggressor identification.
- Develop protocols that assist police in identifying the predominant aggressor and evaluating defensive injuries.

### **Ministry of Labour, Social Protection and the Family**

- Encourage social assistance departments, maternal center staff, and NGOs to prioritize protective orders as a key element of the response to domestic violence.
- Provide regular and repeated trainings on the dynamics of domestic violence, sensitivity to victims, and the domestic violence laws to all maternal center staff, social assistants, and municipal authorities.
- Appoint dedicated specialists in domestic violence for each multi-disciplinary team. Specialists well-trained in the dynamics of domestic violence can not only provide specific help to a victim but can also serve as an on-the-spot trainer for the other members of the multi-disciplinary team.
- Provide private and dedicated meeting rooms in municipal buildings for social assistants and multi-disciplinary teams to meet with victims of domestic violence.
- Commission independent studies to assess the efficacy of aggressor counseling and treatment programs in preventing further violence. NGOs not involved in administering the treatment should conduct this research with government funding.
- Aggressor centers should follow strict best practice standards for working with batterers.<sup>431</sup>

### **Ministry of Health**

- Prioritize training for family doctors, forensic doctors, and medical workers at the village level on the dynamics of domestic violence and the unique needs of victims.
- Eliminate forensic examination fees for all domestic violence victims.
- Ensure that forensic services for victims are located throughout the country and are adequately staffed.
- Review regulations for forensic doctors on assessing the level of injuries in domestic violence cases to include dynamics of domestic violence, such as risks of currently-categorized low level injuries, repeat violence, and escalation of violence.
- Expand the role of family doctors in the assessment of injuries. This information can be used by the justice system in establishing the aggressor's accountability.
- Create statistics on cases of domestic violence referred to health care and calculate the health care costs of domestic violence.

### **Ministry of Justice**

- Provide regular and compulsory training to all levels of the judiciary on the dynamics of domestic violence, power and control, and the unique needs of victims.
- Expand the use and capacity of legal assistance lawyers and paralegals to help victims write applications and to file for protective orders.

<sup>431</sup> See The Advocates for Human Rights, [Best Practices for Batterer Intervention Programs](http://www.stopvaw.org/best_practices_for_batterers_intervention_programs), 17 October 2008, at [http://www.stopvaw.org/best\\_practices\\_for\\_batterers\\_intervention\\_programs](http://www.stopvaw.org/best_practices_for_batterers_intervention_programs).

## RECOMMENDATIONS

- Require courts to immediately forward a copy of decisions made under Law 45 to the local police, social assistance department, the victim, her lawyer, and the aggressor.
- Establish specialized dockets or courts on domestic violence to expedite cases and promote expert handling on all levels. Establish systems that allow for protective orders to be granted on nights and weekends.
- Train judges to order detailed protective measures with exact provisions so that victims feel secure and police know what can be enforced.
- Develop and implement a standardized and mandatory protocol for risk assessments. Provide judges with a risk assessment bench guide.
- Enhance victim safety by ordering separate exits of victims and aggressors and creating a separate victim waiting room in court buildings.

### **Police**

- Adopt and implement a probable cause standard of arrest allowing police to arrest and detain an aggressor, even if they did not witness the act, if they determine that there is probable cause that a criminal offense has occurred.
- Create and implement policies that require police to determine the predominant aggressor in a domestic violence situation and arrest only the predominant aggressor.
- Arrest and detain aggressors for all violations of protective measures. When the aggressor does not violate the specific terms of the protective order but his intent to track the victim is clear, police should treat those actions as stalking and harassment and file for protective measures accordingly.
- Refrain from giving a special warning of perjury to victims of domestic violence.
- Consistently inform victims of their rights and referrals to available support organizations.
- Refrain from using the Contravention Code for cases of light injury. Criminal Code Article 201<sup>1</sup> should be enforced in these cases.
- Initiate regular communication with social assistants in all cities regarding orders for protection issuance and violation.

### **Prosecutors**

- Aggressively seek the protection of victims and accountability for aggressors by enforcing criminal laws in domestic violence cases.
- Inform victims of protective measures available and encourage victims to request them.
- Strive for a policy that promotes victim-absent prosecutions, even in cases where victims recant or exercise the right not to testify. In deciding whether to pursue prosecution without cooperation of the victim, prosecutors should consider the totality of evidence that might support or corroborate the victim's statement, including a history of abuse, and ensure that all available evidence has been collected by the police investigative body.
- Train and communicate with police best practices for gathering evidence such as tapes of emergency calls, witness statements, and detailed descriptions of crime scenes, including photographs of relevant evidence such as bruises, missing teeth, and the crime scene.
- Support efforts to amend the law so that prosecutors can request protective measures for victims during criminal proceedings. In criminal cases, prosecutors should recognize when victims are in danger and should be able to implement protective measures on a victim's behalf.
- Create a fatality review process with police, judiciary, and all relevant parties to audit the steps taken or missed when a violent aggressor murders the victim.
- Create positions for legal advocates within the prosecutorial system to maintain regular contact with victims, assist them in filing requests for protective orders, answer questions, communicate important procedural information, and accompany them to court.

## **Judges**

- Refrain from imposing fines that punish victims who share financial resources with their aggressors and suspended sentences that place victims in danger of further harm in domestic violence cases, including violations of protective measures.
- Give priority to protective measures that focus on victim safety, including eviction, restraining orders, and confiscation of firearms. These measures should be ordered for the maximum period allowed under the law.
- Refrain from requiring any evidence other than the victim's statement to issue protective orders.
- Clarify to all parties that protective orders are effective immediately.
- Issue protective orders in cases where parties have already separated, such as in divorce proceedings or when victims are in a shelter.
- Aggressor counseling and treatment programs can be important measures, but they should never replace or take priority over protective measures that provide immediate protection to a victim and her children. When ordered, aggressor counseling and treatment programs should be ordered in conjunction with other protective measures necessary to ensure victim safety, such as restraining orders or eviction, and jail time.
- Specify a specific minimum distance that aggressors must stay away from victims in restraining orders, e.g., 200 meters.
- Send copies of all decisions to victims and their lawyers immediately, without waiting for requests, and clarify that the orders are effective immediately.
- Encourage and participate in regular training for judges and court personnel on all aspects of domestic violence, including the dynamics of domestic violence, the unique needs of victims, risk assessment, defensive injuries, domestic violence and child custody, and promoting victim safety through regular communication of court processes.
- Order sentences for domestic violence commensurate with the gravity of the aggressor's crimes of violence against women.
- Consistently and immediately inform the victim of the release of the aggressor.
- Extend duration of protective measures based upon the victim's fear of repeated violence.
- Ensure that a risk assessment is performed in all cases that involve domestic violence.
- Immediately cease requiring parties to meet together in hearings pursuant to Criminal Procedure Code Article 276(5). If Article 276(5) remains in effect, judges should be trained to ask victims privately if the reconciliation is truly voluntary and if they need social services counseling.
- Base decisions for continued detention or release of aggressors on the law and the victim's safety, rather than the victim's testimony.
- Actively supervise all domestic violence cases that are mediated by others to ensure victim safety is given priority.
- Expedite divorce proceedings where domestic violence is involved.
- Take all measures possible to protect a victim's safety in divorce proceedings involving domestic violence, such as custody determinations, supervised visitation, or prohibited visitation.
- Protect confidentiality of victims' addresses, including their home address, their work address, children's child care or school address, and all other relevant addresses of which the aggressor's knowledge could place the victim at risk of repeat violence.
- Ensure separate waiting areas and consistent and adequate security, including court escorts and security personnel, for victims upon arrival, within, and upon departure from the courthouse.

## **Forensic Doctors**

- Receive regular and required training on sensitivity to victims and domestic violence legislation.
- Incorporate circumstances of the injury into forensic reports to demonstrate high-risk situations and repeated violence.

### **Child Protection Services**

- Receive regular and required training on the unique needs of victims and domestic violence legislation.
- Allocate resources to ensure supervised and secure facilities for child visitation in domestic violence cases. Take adequate steps to enhance victim safety during supervised visitation, such as arranging schedules so the victim and aggressor are not in the facility at the same time. Ensure that the visitation is supervised by specialized, trained personnel to prevent further traumatizing of children and any attempts by the aggressor to elicit information from children that could place victims at risk.
- Treat all cases of domestic violence as urgent, and prioritize the safety of all victims. While child protection guidelines direct guardianship authorities to focus on the child's welfare, best practices show that the safety of children in domestic violence cases is best guaranteed by placing custody with and protecting the non-violent parent.

### **Social Assistants**

- Regularly complete training on all aspects of domestic violence, including the dynamics of domestic violence, the unique needs of victims, risk assessment, dangers of mediation, domestic violence and child custody, and promoting victim safety.
- If mediation provisions remain in effect, require that all domestic violence mediators, including social assistant mediators, be trained in best practices for mediation.
- Routinely inform victims about the benefits of protective orders and give them assistance in writing and filing the application for a protective order. Accompany victims to court to file the order.
- Take adequate steps to enhance victim safety during supervised visitation, such as arranging schedules so the victim and aggressor arrive and depart at different times. Ensure that the visitation is supervised by specialized, trained personnel to prevent further traumatizing of children and any attempts by the aggressor to elicit information from children that could place victims at risk.
- Refrain from carrying out mediation in domestic violence cases. Where it is not possible to avoid mediation, require separate mediation for parties who have experienced domestic violence, regardless of whether or not there is a protective order.

### **Health Care Workers**

- Regularly complete training on the dynamics of domestic violence and coercive control, the identification of domestic violence injuries, victim's rights and resources, and how to safely discuss the cause of the injury with victims.
- Exercise diligence in identifying and documenting injuries likely caused by domestic violence while respecting the victim's privacy and wishes about reporting.
- Consistently inform victims of their rights and referrals to available support organizations.

## APPENDICES

### APPENDIX A. CIVIL PROVISIONS RELATED TO DOMESTIC VIOLENCE

#### *LAW 45 ON PREVENTING AND COMBATING FAMILY VIOLENCE*

##### ***CIVIL PROCEDURE CODE PROVISIONS***

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Civil Procedure Code Art. 318<sup>2</sup>  
Civil Procedure Code Art. 318<sup>3</sup>  
Civil Procedure Code Art. 318<sup>4</sup>  
Civil Procedure Code Art. 318<sup>5</sup>  
Civil Procedure Code Art. 318<sup>6</sup>

### APPENDIX B. LAW 167 ON THE AMENDMENT AND SUPPLEMENTING OF CERTAIN LEGISLATIVE ACTS

### APPENDIX C. CRIMINAL PROVISIONS RELATED TO DOMESTIC VIOLENCE

##### ***CRIMINAL CODE PROVISIONS***

Criminal Code Article 109  
Criminal Code Article 133<sup>1</sup>  
Criminal Code Article 151  
Criminal Code Article 152  
Criminal Code Article 201<sup>1</sup>  
Criminal Code Article 320

##### ***CRIMINAL PROCEDURE CODE PROVISIONS***

Criminal Procedure Code Article 97  
Criminal Procedure Code Article 140  
Criminal Procedure Code Article 143  
Criminal Procedure Code Article 165  
Criminal Procedure Code Article 185  
Criminal Procedure Code Article 215<sup>1</sup>  
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### APPENDIX D. CONTRAVENTION CODE PROVISIONS RELATED TO DOMESTIC VIOLENCE

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**APPENDIX A. CIVIL PROVISIONS RELATED TO DOMESTIC VIOLENCE*****LAW 45 ON PREVENTING AND COMBATING FAMILY VIOLENCE***

UNOFFICIAL TRANSLATION PREPARED BY THE OSCE MISSION TO MOLDOVA, APRIL 2008

**Law on Preventing and Combating Family Violence**

Law Number 45-XVI of 1 March 2007

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**Article 18. Final provisions**

Preventing and combating family violence is part of the national policy for the protection and support of the family and represents an important public health issue.

Parliament adopts this organic law to strengthen, protect and support the family and to ensure the observance of fundamental legislative principles regarding the family and the equality of opportunities between women and men regarding their human right to a violence-free life.

**CHAPTER I  
GENERAL PROVISIONS**

**Article 1. Subject matter of the law**

This law establishes the legal and organizational framework for preventing and combating family violence, the authorities and institutions responsible for preventing and combating family violence, and the mechanism for identifying and solving cases of violence.

**Article 2. Principal terms**

For the purpose of this law, the following terms shall mean:

*Family violence* – any deliberate action or inaction, except actions taken in self-defense or in defense of other persons, whether physical or verbal, that is manifested through physical, sexual, psychological, spiritual or economic abuse or by causing material or moral damage, committed by a family member against other family members, including against minors, or against common or personal property;

*Physical violence* – deliberate infliction of bodily injuries or damage to health by hitting, pushing, tossing, pulling by the hair, stinging, cutting, burning, strangling, biting, in any form and of any intensity; by poisoning, intoxicating, or other similar actions;

*Sexual violence* – any violence of a sexual character or any illegal sexual conduct within the family or within other interpersonal relationships, such as marital rape; prohibiting the use of contraception; sexual harassment; any unwanted, imposed sexual conduct; forced prostitution; any illegal sexual conduct with a minor family member, including fondling, kissing, setting the child into poses or other unwanted touching with sexual connotations; or other similar actions;

*Psychological violence* – imposing one's volition or personal control by causing tension and mental suffering including ridiculing, swearing, insulting, derogatory nicknaming; blackmailing; the intentional destruction of objects; verbal threats; the demonstrative showing of fire arms or hitting domestic animals; neglect; meddling in the personal lives of others; acts of jealousy; imposing isolation by detention,

including detention in the family dwelling; isolation from the family, community, friends; prohibiting professional accomplishment, prohibiting attendance at educational institutions; seizure of identity documents; deprivation of access to information; or other similar actions;

*Spiritual violence* – the underestimation of, or demeaning the importance of, the need to satisfy moral and spiritual needs by prohibiting, limiting, ridiculing or punishing the aspirations of family members, by prohibiting, ridiculing or punishing access to cultural, ethnic, linguistic or religious values; by imposing a system of unacceptable personal values; or by other actions with similar effects or repercussions;

*Economic violence* – the deprivation of economic means, including the deprivation essentials such as food, medicine and living necessities; the abuse of a position of authority such as taking away personal property, prohibiting the possession, use or disposal of common property, unfair control over common property and resources; refusal to support the family; imposing hard or harmful labor or damaging health, including such actions affecting minor members of the family; or other similar actions;

*Moral damage* – causing suffering to a family member, including a minor child, within the family or in other interpersonal relationships, which leads to humiliation, fear, abasement, inability to defend oneself against physical violence, or feelings of frustration;

*Material damage* – damage that can be evaluated or estimated in financial/monetary terms, resulting from any act of violence in the family, or in a cohabitation relationship, and to include the costs for examination of the case of family violence;

*Aggressor* – person who commits acts of violence in the family or in a cohabitation relationship;

*Victim* – a person, adult or minor, subject to acts of violence within the family or within a cohabitation relationship;

*Protective order* – a legal act, by which the court applies victim protection measures.

### **Article 3. Applicability of this law**

- (1) This law applies to: the aggressor and the victim citizens of the Republic of Moldova and to foreign citizens and stateless persons who live in the Republic of Moldova.
- (2) This law applies:
  - a. In cases of cohabitation – persons in relationship of marriage, divorce, intimate cohabitation, guardianship and tutorship, their direct or collateral relatives, relatives' spouses, or other persons who are maintained by the such persons;
  - b. In cases of separate habitation – persons in a relationship of marriage; their children, including adopted children; those born outside the marriage; those under guardianship or tutorship; or other persons who are maintained by such persons.

### **Article 4. Legal framework**

- (1) The legislation on preventing and combating family violence consists of the Constitution of the Republic of Moldova, this law, other normative acts, and international treaties to which the Republic of Moldova is a party.
- (2) If the international treaty to which the Republic of Moldova is a party contains provisions different from those of this law, the provisions of the international treaty shall apply.

### **Article 5. Basic principles of preventing and combating family violence**

- (1) Preventing and combating family violence is based on the following principles:
  - a. Legality;

- b. Equality;
- c. Confidentiality;
- d. Access to justice;
- e. Protection and security of the victim; and
- f. Cooperation of public administration authorities with civil society and international organizations.

**Article 6. Scope of law**

The provisions of this law are applicable in the same manner to the citizens of the Republic of Moldova, foreign citizens and stateless persons, who live on the territory of the Republic of Moldova.

**CHAPTER II**  
**AUTHORITIES AND INSTITUTIONS RESPONSIBLE FOR PREVENTING AND COMBATING FAMILY VIOLENCE**

**Article 7. Authorities and institutions responsible for preventing and combating family violence**

- (1) The authorities and institutions responsible for the administration of this law are:
  - a. Central specialized public administration authorities such as (the Ministry of Labor, Social Protection and Family, the Ministry of Education, the Ministry of Healthcare, the Ministry of the Interior, the Ministry of Justice);
  - b. Specialized local public administration authorities, such as:
    - The social assistance and family protection sections/departments;
    - The general education, youth and sports departments;
    - Healthcare organizations;
    - Internal affairs' organizations;
  - c. Local public administration and social issue commissions;
  - d. Centers/services for victim and aggressor rehabilitation;
  - e. Other organizations with specialized activities in the field.
- (2) The Ministry of Labor, Social Protection and Family is the central public authority responsible for the development and promotion of policies in the field of preventing and combating family violence and providing social assistance.
- (3) A Coordinating Inter-Ministerial Council in the Field of Prevention and Combating of Family Violence shall be created by the Ministry of Labor, Social Protection and Family, consisting of one representative of each central authority specified in paragraph (1), representatives of civil society and other interested parties. The Coordinating Inter-Ministerial Council shall be responsible for ensuring the coordination and collaboration between ministries and other central administrative authorities with functions in the field of prevention and combating of family violence. The Regulation of the Coordinating Inter-Ministerial Council shall be approved by Government decision.
- (4) The local public authority tasked with the implementation of family violence prevention policies and with social assistance of victims and aggressors is the rayon section/department for social assistance and family protection, within which a specialist responsible for the prevention and combating of family violence shall be appointed.
- (5) Other local-level public services shall appoint persons tasked with prevention and combating of family violence, responsible for the coordination of specific activities within their institutions and for the collaboration upon carrying out joint activities at the level of the administrative-territorial unit, based on established collaboration procedures in the field of prevention and combating of family violence cases.

## Article 8. The role of central and local public administration authorities

- (1) Within the limits of their authority, central specialized public administration authorities such as (the Ministry of Labor, Social Protection and Family, the Ministry of Education, the Ministry of Healthcare, the Ministry of Interior and the Ministry of Justice) are to:
  - a. Ensure the development and promotion of policies in the field of family support, in preventing family violence, and in offering protection and assistance to victims and aggressors;
  - b. Coordinate the field activity of decentralized/deconcentrated structures;<sup>432</sup>
  - c. Coordinate, assess and monitor the activity of centers/services for victim and aggressor rehabilitation;
  - d. Establish procedures for identifying, recording and reporting cases of family violence according to gender statistic criteria;
  - e. Strengthen the capacities of human resources in the field of preventing and combating family violence;
  - f. Collaborate with non-governmental organizations and natural and legal persons involved in activity of preventing and combating violence.
- (2) Local public administration authorities are to:
  - a. Appoint commissions for social issues and organize their activities at the local level;
  - b. Create multi-disciplinary teams in the field;
  - c. Organize centers/services for victim and aggressor rehabilitation according to international standards;
  - d. Organize awareness campaigns, studies and other actions in the field of family violence prevention;
  - e. Develop social partnerships with non-governmental organizations including foundations, trade unions, employers' unions and with international organizations that work in the field of preventing and combating family violence;
  - f. Ascertain, through a decision of the commission for social issues, whether the application of protective measures presents danger to the victim's life or health.
- (3) Social assistance and family protection sections/departments, through the specialist responsible for the prevention and combating of family violence, are to:
  - a. Collaborate with the administrative bodies of the interior to identify persons inclined to commit acts of family violence;
  - b. Update the database concerning acts of family violence at the territorial level;
  - c. If appropriate, place the victim into a rehabilitation center and offer the appropriate assistance;
  - d. Conduct psychological and psycho-social counseling in order for victims to overcome the consequences of acts of family violence, by their own means or by referring the case to the specialists of rehabilitation centers;
  - e. Facilitate the aggressor's access to rehabilitation programs, at the request of the law enforcement bodies;
  - f. Protect the lawful rights and interests of victims, including minor victims;
  - g. Carry out informational programs to prevent family violence, jointly with other empowered authorities and in collaboration with non-governmental organizations in the field;
  - h. Determine the need to create centers/services for victim and aggressor rehabilitation, ensure that such centers/services have methodology and information support;
  - i. Monitor and coordinate professional activities, to be carried out by social assistants within mayoralties; for preventing family violence, for supporting/counseling victims and for re-socializing aggressors;
  - j. Present mid-year reports to the Ministry of Labor, Social Protection and Family regarding the activities of the sections/departments and social assistants according to established partnerships;

<sup>432</sup> Editor's Note: This term is from the Law on Local Public Administration and refers to a service that has more independence at the local level and does not report to the central authorities.

- k. Monitor victims and offer assistance after victims leave the rehabilitation centers.
- (4) General education, youth and sports departments are to:
  - a. Ensure that teachers are informed and trained: regarding the classification of acts of family violence; how to apply the methods and means to prevent such acts; and to notify the appropriate authorities;
  - b. Jointly with other authorities with competence in the field and in collaboration with field non-governmental organizations, conduct educational programs for parents and children on preventing and combating family violence;
  - c. Ensure counseling activities for the psychological and psycho-social rehabilitation for minor victims of family violence;
  - d. Through teachers, report cases of family violence to the appropriate authorities, including cases of family violence against children; in such instances the guardianship authority and the police are to be appropriately and immediately notified.
- (5) Medical institutions of all types and levels are to:
  - a. Organize awareness campaigns;
  - b. Report cases of family violence, through medical employees, to the guardianship authority and to the police;
  - c. Ensure medical counseling and assistance for victims;
  - d. Initiate and accomplish programs and services for aggressors; ensure completion of programs for treatment of alcoholism, detoxification, psycho-therapeutic treatment, as applicable, at the expense of the abuser or, as applicable, from the funds of mandatory medical insurance;
  - e. Initiate permanent partnerships with all programs dealing with mother and child health;
  - f. Contract for medical services to be provided by centers/services for victim and aggressor rehabilitation.
- (6) The administrative bodies of the interior, at the specialized unit level are to:
  - a. Identify, record and report cases of family violence;
  - b. Ensure basic records of aggressors;
  - c. Notify the guardianship and tutorship authorities in cases of minor victims of family violence;
  - d. Examine requests and notifications submitted by citizens, medical institutions, forensic medicine centers and other institutions that deal with conflicts within families, acts of violence, death threats or the immediate danger of the same;
  - e. Visit families whose members are on record, perform activities for preventing repeated acts of family violence;
  - f. In emergencies, and contingent on the gravity of the case, ensure the administrative arrest of the aggressor;
  - g. Obtain a protective order from the court in emergencies, based on the victim's request or on the notification of the case; ensure the enforcement of the protective order;
  - h. In family violence cases, explain the victim's rights to the victim and, at the victim's request, assist them with placement in a rehabilitation center;
  - i. Inform the victim of their right to free legal assistance;
  - j. Ensure access to rehabilitation services for the aggressors, including those under administrative arrest;
  - k. Ensure the security, safety and public order in victim rehabilitation centers;
  - l. Monitor and administrate, jointly with social assistants, cases of family violence in the serviced territory and update the field database;
  - m. Collaborate with the appropriate authorities in the field and with civil society to prevent and combat family violence.

#### **Article 9. The role of the Penitentiary Institutions Department**

The Penitentiary Institutions Department is responsible for:

- a. Organizing services and programs for the rehabilitation and the re-socialization of imprisoned aggressors;

- b. Collaboration with other appropriate authorities in the field.

**Article 10. The role of the centers/services for victim and aggressor rehabilitation**

- (1) The center for rehabilitation of victims of family violence, hereinafter referred to as the *Center*, is a specialized institution that offers accommodation, food, legal, social, psychological and medical emergency assistance, safety and protection, and assistance in contacting relatives.
- (2) Centers may be created:
  - a. By the Government, at the proposal of the Ministry of Labor, Social Protection, and Family;
  - b. By the local public administration authorities, at the proposal of the commission for social issues;
  - c. By international organizations and non-governmental organizations, with the notification of the Ministry of Labor, Social Protection and Family;
  - d. By public administration authorities and non-governmental or private organizations, based on an agreement of joint activity.
- (3) A Center is to:
  - a. Ensure protection and accommodation for the victim, until the resolution of the family situation, but for no more than 3 months;
  - b. Offer psychological, pedagogical, social and legal assistance and medical care for the family members who are or might become victims;
  - c. In emergency cases, when the isolation of the aggressor is necessary as a protective measure, undertake, at the victim's request, the placement of the victim and, with the consent of the legal representative or of the guardianship authority, the placement of the child;
  - d. Prohibit aggressor access into the premises;
  - e. Notify law enforcement bodies of the acts of family violence;
  - f. Study and summarize the causes and circumstances of the acts of family violence.
- (4) The founder shall approve regulations for the organization and operation of a Center, based on a framework regulation approved by Government decision.
- (5) The costs of a Center's activity are to be covered from the founder's general budget.
- (6) The organization and operation of the Center may be also materially and financially supported by economic agents and entrepreneurs as set out by the Law on Philanthropy and Sponsorship.
- (7) To ensure the security of the premises where victims are accommodated, a Center shall benefit from free police assistance.
- (8) The aggressor rehabilitation service is to:
  - a. Offer specialized programs for treating alcoholism, detoxification and psycho-therapeutic treatment;
  - b. Offer psychological and social assistance and vocational/career rehabilitation services to the aggressor;
  - c. Collaborate with specialized territorial authorities to promote a healthy lifestyle, to prevent and treat alcohol and drug addiction and sexually transmitted diseases;
  - d. Collaborate with institutions, enterprises and with non-governmental organizations to organize train and retrain aggressors for employment opportunities.
  - e. Inform appropriate authorities about the termination of protective measures and the aggressor's reintegration back into the family;
  - f. Study and summarize the causes and circumstances of the acts of family violence.
- (9) The Government shall establish and monitor the operation standards for the Centers/services for victims' and aggressors' rehabilitation.

**CHAPTER III  
MECHANISM FOR THE RESOLUTION OF ACTS OF FAMILY VIOLENCE**

**Article 11. The victim's right to protection**

- (1) The victim is guaranteed the protection of his/her legitimate rights and interests.



- (2) Responsible persons and other persons who are aware of a threat or danger to the life or health of a potential victim must notify the authorities responsible for preventing and combating family violence.
- (2<sup>1</sup>) The victim is entitled to assistance for physical, mental and social rehabilitation, through medical, psychological, legal and social actions. The rendering of protective services and assistance shall not be conditioned by the victim's willingness to testify and participate in the judicial prosecution of the aggressor. The right to privacy and the confidentiality of information regarding the victim is guaranteed.
- (3) Bodies tasked with the prevention and combating of family violence shall be bound to react promptly to any request and to inform victims about their rights, about bodies and institutions tasked with the prevention and combating of family violence; about the types of services and organization that may be addressed for help; about assistance available to the victims; about where and how can they lodge a complaint; about the procedure to be followed after lodging the complaint and about their role in such proceedings; how protection can be obtained; to what extent and in what conditions can counseling or legal assistance be accessed; whether there are risks for their life or health in case of release of a an apprehended person or of a convict; whether the protective ordinance has been cancelled.
- (4) Cases of family violence may be subject to mediation, at the request of the parties. Mediation shall be performed by certified mediators or, absent such mediators, by the commission for social issues, with the participation of the social assistant, as appropriate.
- (5) The victim is entitled to free of charge primary and proficient legal assistance, in accordance with legislation on legal assistance guaranteed by the state.
- (6) The victim shall be offered medical assistance in medical and sanitary institutions, in accordance with the Law on mandatory insurance for medical assistance.
- (7) The victim's privacy and identity are protected. Recording, storage and use of the victim's personal data shall be performed in accordance with the provisions of the Law on protection of personal data.

#### **Article 12. Persons who may submit claims of family violence**

Persons entitled to submit claims of family violence are:

- a. the victim;
- b. in emergencies, family members;
- c. responsible persons and professionals who come into contact with the family;
- d. the guardianship authority;
- e. other persons who are aware of an imminent threat of or potential for acts of violence or of the occurrence of such acts.

#### **Article 13. Submittal of claims**

- (1) A claim regarding acts of family violence shall be submitted:
- a. To the administrative bodies of the interior;
  - b. To the court;
  - c. To the department of social assistance and family and child protection;
  - d. To the local public administration authority.
- (2) The claim shall be submitted at the place:
- a. of victim's domicile;
  - b. of the victim's temporary residence, if the victim has left his/her domicile to avoid the continuation of direct violence;
  - c. of aggressor's residence;
  - d. where the victim has sought assistance;
  - e. where the act of violence took place.



- (3) No state fee will be charged for the submission of claims to the court regarding acts of family violence.

#### **Article 14. Examination of the claim**

- (1) The claim submitted to the administrative bodies of the interior shall be examined according to the applicable legislation.
- (2) The claim submitted to the court shall be examined according to the Civil Procedure and Criminal Procedure Codes.
- (3) The claim submitted to any authority responsible for preventing and combating family violence shall be referred within one workday to the appropriate authority.

#### **Article 15. Protective measures**

- (1) The court shall, within 24 hours of receipt of the claim, issue a protective order, to assist the victim, by applying the following measures against the aggressor:
  - a. Oblige the aggressor temporarily to leave the joint dwelling or to keep away from the victim's dwelling, without making any determination as to ownership of property or assets;
  - b. Oblige the aggressor to keep away from the victim's person;
  - c. Oblige the aggressor to refrain from contacting the victim, the victim's children or other dependants of the victim;
  - d. Prohibit the aggressor from visiting the victim's place of work or residence.
  - e. Oblige the aggressor, until the case is resolved, to contribute to the maintenance of his/her and the victim's children;
  - f. Oblige the aggressor to cover the costs and damages caused by the aggressor's acts of violence, including medical expenses and the cost of replacing or repairing destroyed or damaged assets;
  - g. Restrict the unilateral disposal of common assets;
  - h. Oblige the aggressor to partake in a special treatment or counseling program, if the court determines this is necessary to reduce or eliminate violence;
  - i. Establish a temporary visitation schedule for the aggressor's underage children;
  - j. Prohibit the aggressor from keeping or handling fire arms.
- (2) The sector inspector, in collaboration with the social assistant, is responsible for notifying the aggressor of the protective order and its application.
- (3) The protective measures specified in paragraph 1 will be applied for up to three months, may be cancelled upon the elimination of the threat or danger that caused the application of such measures, and may be extended in case of a repeated claim or if the conditions set in the protective order have not been observed.
- (4) The application of protective measures does not prevent the commencement of divorce procedures, division of property, annulment of parental rights, seizure of a child without annulment of parental rights or other actions provided by applicable legislation.
- (5) The supervision of the execution of the protective measures established by the court is the task of the administrative bodies of interior, the administrative bodies of social assistance and other administrative bodies, as appropriate.
- (6) If warranted, the court may lift the protective measures at the victim's request. If the victims are children or infirm persons, the court is obligated to examine the case.
- (7) An appeal of the protective order may be made according to applicable legislation.

#### **Article 16. Funding**

- (1) The implementation of this law shall be funded from the state budget, the budgets of territorial-administrative units, within the limits of annually established funds, and from other sources that are not prohibited by law.

- (2) Centers/services for the rehabilitation of victims and aggressors are to be funded from allotments provided from the budgets of territorial-administrative units, from donations, grants, and from other sources, according to applicable legislation.

**Article 17. Sanctions**

- (1) Non-observance by the aggressor of the provisions of Article 15 paragraph 1 shall be sanctioned as provided in the applicable legislation.
- (2) When acts of family violence contain elements of an administrative offence or of a criminal offence, applicable legislation shall apply, notwithstanding any applicable protective measures.
- (3) Non-observance of this law by responsible persons or by professionals in the field is a breach of work discipline and requires disciplinary liability as established by law.

**CHAPTER IV  
FINAL PROVISIONS**

**Article 18**

- (1) This law shall take effect six months from the publication date.
- (2) Within 3 months, the Government:
  - a. Shall submit to the Parliament proposals for bringing existing legislation in conformity with this law; and
  - b. Shall bring its normative acts in conformity with this law.

SPEAKER OF THE PARLIAMENT  
#45-XVI, March 1, 2007

Marian LUPU

## **CIVIL PROCEDURE CODE PROVISIONS**

### **Article 318<sup>1</sup>. Submittal of request**

- (1) The request for the application of protective measures shall be submitted to the court by the victim of family violence or by its legal representative, and in respect of minors – by the body of guardianship and trusteeship. In case of victim's inability to submit the request, it may be submitted, at the instruction of the victim, by the prosecutor, the social assistance body or the police.
- (2) The request for the application of protective measures shall be submitted to the competent court at the victim's domicile or at the whereabouts of the victim or of the aggressor, at the place where the victim has solicited assistance or at the place where the act of violence occurred.

### **Article 318<sup>2</sup>. Content of request**

The request for the application of protective measures shall specify the circumstances of the act of violence, its duration, suffered consequences and other circumstances indicating that the application of protective measures is needed.

### **Article 318<sup>3</sup>. Examination of request**

- (1) Upon receiving the request, the court shall immediately contact the district police at the whereabouts of the aggressor and shall request aggressor's notification about the initiation of the proceedings.
- (2) The court shall request from the social assistance body or the police, as the case may be, to present a report characterizing the relevant family and the aggressor. The court may also solicit other acts required for the examination of the request.
- (3) Aggressor's failure to appear at the court meeting shall not prevent the court from examining the request.

### **Article 318<sup>4</sup>. Issuance of protective ordinance**

- (1) Within 24 hours from the receipt of the request for the application of protective measures, the court shall issue an order for the allowance or dismissal of the request.
- (2) In case of allowance of request, the court shall issue a protective ordinance, applying to the aggressor one or several of the following measures:
  - a) an order to temporarily move out of the common abode or to refrain from approaching the victim's abode, without deciding on the ownership over the assets;
  - b) an order to refrain from approaching the victim's whereabouts, less than a distance, which ensures the victim's safety;
  - c) an order to refrain from contacting the victim, its children, other dependants of the victim;
  - d) an interdiction to visit the victim's place of work and abode;
  - e) an order to contribute to the maintenance of the common children of the aggressor and the victim, until the solving of the case;
  - f) an order to compensate expenses and damage caused by its acts of violence, including medical expenses and those for the replacement or repairs of destroyed or deteriorated assets;
  - g) a limitation of unilateral disposal of joint assets;
  - h) a temporary regime for visiting its minor children;
  - i) an interdiction to keep and wear guns.
- (3) Protective measures shall be applied for a term of up to three months.
- (4) The court shall immediately forward the protective ordinance to the police and the social assistance body for immediate execution.

- (5) The ordinance disposing the protective measures specified in paragraph (2) sections e) and f) shall be forwarded for immediate execution to the executive office, in accordance with legislation on execution of civil judgments.

**Article 318<sup>5</sup>. Extension and revocation of protective ordinance**

- (1) The duration of protective measures may be extended by the court at the repeated request addressed as a result of the committal of acts of family violence or as a result of nonobservance of the conditions established in the protective ordinance.
- (2) At the grounded request of the victim, the court may revoke the protective measures, after ensuring that the victim's will has been expressed freely and that the victim has not been subject to pressure from the part of the aggressor.

**Article 318<sup>6</sup>. Appeal against the order for the allowance or dismissal of the request for the application of protective measures and the appeal against the order for the application of the protective ordinance**

- (1) The court order for the allowance or dismissal of the request for the application of protective measures and the court order for the application of the protective ordinance may be appealed by order of reversal in accordance with this Code.
- (2) The appeal against the court order for the application of the protective ordinance shall not suspend the execution of measures applied.

## APPENDIX B. LAW 167 ON THE AMENDMENT AND SUPPLEMENTING OF CERTAIN LEGISLATIVE ACTS

Law No. 167  
of 9 July 2010

### On the amendment and supplementing of certain legislative acts

Published: September 3, 2010; The Official Monitor No. 155-158

The Parliament adopts this organic law.

**Art. I.** – Law No. 416-XII of December 18, 1990 on police (published repeatedly in the Official Monitor of the Republic of Moldova, 2002, No. 17–19, art. 56), with subsequent amendments, shall be supplemented as follows:

1. Article 9 is supplemented with section 6<sup>1</sup>) reading as follows:  
“6<sup>1</sup>) appoints the subdivision responsible for the prevention and combating of family violence, which participates in the development and implementation of family violence prevention and combating measures, ensuring the protection of victims of family violence and the initiation of aggressors’ prosecution;”.
2. Article 12 is supplemented with section 5<sup>1</sup>) reading as follows:  
“5<sup>1</sup>) to ensure protection of victims of family violence and to monitor the execution of the protective ordinance, in accordance with the law;”.
3. Article 13 is supplemented with section 4<sup>1</sup>) reading as follows:  
“4<sup>1</sup>) if the victim of family violence is in a state of helplessness, to seek in judicial courts the issuance of the protective ordinance, based on the victim’s request or the case report;”.

**Art. II.** – Article 37 paragraph (4) of the Family Code No. 1316-XIV of October 26, 2000 (The Official Monitor of the Republic of Moldova, 2001, No. 47–48, art. 210), with subsequent amendments, is supplemented at the end with the words, “except for divorce cases, commenced on the grounds of family violence confirmed with proofs”.

**Art. III.** – The Criminal Code of the Republic of Moldova No. 985-XV of April 18, 2002 (published repeatedly in the Official Monitor of the Republic of Moldova, 2009, No. 72–74, art. 195), with subsequent amendments, is amended and supplemented as follows:

1. Article 90, paragraph (6) is supplemented with section c<sup>1</sup>) reading as follows:  
“c<sup>1</sup>) to participate in a special treatment or counseling program with a view to reducing violent behavior;”.
2. The Code is supplemented with Article 133<sup>1</sup> reading as follows:  
**Article 133<sup>1</sup>.** Family member

A family member shall have the following meaning:

- a) in case of joint habitation: persons in relations of marriage, cohabitation, divorced persons, persons in relations of guardianship and trusteeship, their direct or collateral relatives, relatives’ spouses;
- b) in case of separate habitation: persons in relations of marriage, their children, including adoptive children, children born out of wedlock and children under trusteeship.”

3. Article 171, paragraph (2) is supplemented with section b<sup>2</sup>) reading as follows:  
“b<sup>2</sup>) committed against a family member;”.
4. Article 172, paragraph (2) is supplemented with section b<sup>2</sup>) reading as follows:  
“b<sup>2</sup>) committed against a family member;”.
5. Article 173 shall read as follows:  
**Article 173.** Sexual harassment  
Sexual harassment, i.e. manifesting physical, verbal or nonverbal behavior, which infringes upon a person’s dignity or creates an unpleasant, hostile, degrading, humiliating or insulting atmosphere, aimed at compelling a person to assent to sexual intercourse or other unwanted actions of sexual nature, committed by means of threat, constraint or blackmail, shall be punishable with a fine from 300 to 500 conventional units or with unpaid labor for the benefit of the community from 140 to 240 hours; or with up to 3 years imprisonment.”
6. The Code is supplemented with Article 201<sup>1</sup> reading as follows:  
**Article 201<sup>1</sup>.** Family violence
  - (1) Family violence, meaning deliberate action or inaction, manifested physically or verbally, committed by a family member against another family member, which provoked physical suffering following minor bodily or health injuries, mental suffering or material or moral damage shall be punished with unpaid labor for the benefit of the community from 150 to 180 hours or with up to 2 years imprisonment.
  - (2) The same deed:
    - a) committed against two or more family members;
    - b) which provoked bodily or health injuries of medium gravity
 shall be punished with unpaid labor for the benefit of the community from 180 to 240 hours or with up to 5 years imprisonment.
  - (3) The same deed, which:
    - a) has caused grave bodily or health injuries;
    - b) has determined a person to commit suicide or suicide attempt;
    - c) has caused the victim’s death
 shall be punished with imprisonment from 5 to 15 years.”

**Art. IV.** – In Article 26 paragraph (3) of the Law No. 102-XV of March 13, 2003 on employment and social protection of persons looking for a job (The Official Monitor of the Republic of Moldova, 2003, No. 70–72, art. 312), with subsequent amendments, the word “predominantly” shall be replaced with the word “primarily” while after the words “as well as” the following words shall be introduced “victims of family violence,”.

**Art. V.** – The Code of Criminal Procedure of the Republic of Moldova No. 122-XV of March 14, 2003 (The Official Monitor of the Republic of Moldova, 2003, No. 104–110, art. 447), with subsequent amendments, is supplemented as follows:

1. Article 58, paragraph (3) is supplemented with section 6<sup>1</sup>) reading as follows:  
“6<sup>1</sup>) to submit a request for the application of protective measures in cases of family violence;”.
2. Article 165 paragraph (2) section 2), shall be supplemented after the words “taken in his respect,” with the words “as well as the protective ordinance in the case of family violence,”
3. Article 185 paragraph (2), section 3) is supplemented at the end with the words “or has violated the protective ordinance in the family violence case”.
4. The Code is supplemented with Article 215<sup>1</sup> reading as follows:

**Article 215<sup>1</sup>.** Protective measures applied to victims of family violence

- (1) The request of the victim of family violence submitted during the criminal trial to the criminal prosecution body, the prosecutor or the court, concerning threats of death, violence, deterioration or destruction of assets or other illegal acts shall be examined by the court, which is bound to order measures to ensure the protection of the victim against the suspect, the accused, the defendant, who is a family member, by issuing a protective ordinance.
- (2) Where the request is submitted to the criminal prosecution body or the prosecutor, such shall immediately forward the request to court for examination, by way of a solicitation.
- (3) Within 24 hours as of the receipt of the request the court shall issue, by way of court order, a protective ordinance, by which shall offer protection to the victim and shall apply to the suspect, the accused or the defendant one of the following measures:
  - a) an order to temporarily move out of the common abode or to refrain from approaching the victim's abode, regardless of the right of ownership over the assets;
  - b) an order to refrain from approaching the victim's whereabouts, less than a distance, which ensures the victim's safety;
  - c) an order to refrain from contacting the victim, its children, other dependants of the victim;
  - d) an interdiction to visit the victim's place of work and abode;
  - e) a limitation of unilateral disposal of joint assets;
  - f) an order to pass a medical exam of one's mental state and drug/alcohol addiction and, where the medical conclusion confirms drug/alcohol addiction, an order to apply forced medical treatment for drug/alcohol addiction;
  - g) an order to participate in a special treatment or counseling program, where the court determines that this is necessary for the reduction or elimination of violence;
  - h) an interdiction to keep and wear guns.
- (4) Protective measures shall apply for up to three months. The duration of protective measures may be extended by the court at the repeated request addressed as a result of the committal of acts of family violence or as a result of nonobservance of the conditions established in the protective ordinance.
- (5) The protective ordinance shall be immediately forwarded to the bodies of internal affairs and the social assistance body at the whereabouts of the suspect, the accused, or the defendant.
- (6) The court order for the application or extension of the protective ordinance is instantly enforceable and may be appealed in the court of higher instance."

## 5. Article 276:

In paragraph (1), after number "161," number "173," shall be introduced;

Paragraph (5) is supplemented at the end with the following text: "In cases of family violence, the prosecutor or the court shall determine whether the victim's willingness to reconcile is expressed freely and shall ensure that the victim has had effective access to assistance and protection."

## 6. Article 511, paragraph (1) is supplemented with section 5) reading as follows:

"5) to participate in a special treatment or counseling program with a view to reducing violent behavior."

**Art. VI.** – The Code of Civil Procedure of the Republic of Moldova No. 225-XV of May 30 2003 (The Official Monitor of the Republic of Moldova, 2003, No. 111–115, art. 451), with subsequent amendments, is supplemented as follows:

1. Article 85, paragraph (1) is supplemented with section c<sup>1</sup>) reading as follows:  
"c<sup>1</sup>) victims of family violence – in respect of requests for the application of protective measures;".
2. Article 279, paragraph (1) is supplemented with section g<sup>1</sup>) reading as follows:

“g<sup>1</sup>) application of protective measures in cases of family violence;”.

3. The Code is supplemented with chapter XXX<sup>1</sup> reading as follows:

**CHAPTER XXX<sup>1</sup>**  
**APPLICATION OF PROTECTIVE MEASURES IN CASES IF FAMILY VIOLENCE**

**Article 318<sup>1</sup>.** Submittal of request

- (1) The request for the application of protective measures shall be submitted to the court by the victim of family violence or by its legal representative, and in respect of minors – by the body of guardianship and trusteeship. In case of victim’s inability to submit the request, it may be submitted, at the instruction of the victim, by the prosecutor, the social assistance body or the police.
- (2) The request for the application of protective measures shall be submitted to the competent court at the victim’s domicile or at the whereabouts of the victim or of the aggressor, at the place where the victim has solicited assistance or at the place where the act of violence occurred.

**Article 318<sup>2</sup>.** Content of request

The request for the application of protective measures shall specify the circumstances of the act of violence, its duration, suffered consequences and other circumstances indicating that the application of protective measures is needed.

**Article 318<sup>3</sup>.** Examination of request

- (1) Upon receiving the request, the court shall immediately contact the district police at the whereabouts of the aggressor and shall request aggressor’s notification about the initiation of the proceedings.
- (2) The court shall request from the social assistance body or the police, as the case may be, to present a report characterizing the relevant family and the aggressor. The court may also solicit other actes required for the examination of the request.
- (3) Aggressor’s failure to appear at the court meeting shall not prevent the court from examining the request.

**Article 318<sup>4</sup>.** Issuance of protective ordinance

- (1) Within 24 hours from the receipt of the request for the application of protective measures, the court shall issue an order for the allowance or dismissal of the request.
- (2) In case of allowance of request, the court shall issue a protective ordinance, applying to the aggressor one or several of the following measures:
  - a. an order to temporarily move out of the common abode or to refrain from approaching the victim’s abode, without deciding on the ownership over the assets;
  - b. an order to refrain from approaching the victim’s whereabouts, less than a distance, which ensures the victim’s safety;
  - c. an order to refrain from contacting the victim, its children, other dependants of the victim;
  - d. an interdiction to visit the victim’s place of work and abode;
  - e. an order to contribute to the maintenance of the common children of the aggressor and the victim, until the solving of the case;
  - f. an order to compensate expenses and damage caused by its acts of violence, including medical expenses and those for the replacement or repairs of destroyed or deteriorated assets;
  - g. a limitation of unilateral disposal of joint assets;
  - h. a temporary regime for visiting its minor children;



- i. an interdiction to keep and wear guns.
- (3) Protective measures shall be applied for a term of up to three months.
- (4) The court shall immediately forward the protective ordinance to the police and the social assistance body for immediate execution.
- (5) The ordinance disposing the protective measures specified in paragraph (2) sections e) and f) shall be forwarded for immediate execution to the executive office, in accordance with legislation on execution of civil judgments.

**Article 318<sup>5</sup>.** Extension and revocation of protective ordinance

- (1) The duration of protective measures may be extended by the court at the repeated request addressed as a result of the committal of acts of family violence or as a result of nonobservance of the conditions established in the protective ordinance.
- (2) At the grounded request of the victim, the court may revoke the protective measures, after ensuring that the victim's will has been expressed freely and that the victim has not been subject to pressure from the part of the aggressor.

**Article 318<sup>6</sup>.** Appeal against the order for the allowance or dismissal of the request for the application of protective measures and the appeal against the order for the application of the protective ordinance

- (1) The court order for the allowance or dismissal of the request for the application of protective measures and the court order for the application of the protective ordinance may be appealed by order of reversal in accordance with this Code.
- (2) The appeal against the court order for the application of the protective ordinance shall not suspend the execution of measures applied.

**Art. VII.** – Article 7 of the Law on social assistance No. 547-XV of December 25, 2003 (The Official Monitor of the Republic of Moldova, 2004, No. 42–44, art. 249), with subsequent amendments, is supplemented with section c<sup>1</sup>) reading as follows:  
“c<sup>1</sup>) families affected by intra-family violence;”.

**Art. VIII.** – In Article 29 paragraph (1) section r) of Law No. 436-XVI of December 28, 2006 on local public administration (The Official Monitor of the Republic of Moldova, 2007, No. 32–35, art. 116), with subsequent amendments, after the words “families with many children,” the following words shall be introduced: “families affected by intra-family violence.”.

**Art. IX.** – Law No. 45-XVI of March 1, 2007 on prevention and combating of family violence (The Official Monitor of the Republic of Moldova, 2008, No. 55–56, art. 178) shall be amended and supplemented as follows:

- 1. Article 7 is supplemented with paragraphs (3), (4) and (5) reading as follows:
  - “(3) A Coordinating Inter-Ministerial Council in the Field of Prevention and Combating of Family Violence shall be created by the Ministry of Labor, Social Protection and Family, consisting of one representative of each central authority specified in paragraph (1), representatives of civil society and other interested parties. The Coordinating Inter-Ministerial Council shall be responsible for ensuring the coordination and collaboration between ministries and other central administrative authorities with functions in the field of prevention and combating of family violence. The Regulation of the Coordinating Inter-Ministerial Council shall be approved by Government decision.
  - (4) The local public authority tasked with the implementation of family violence prevention policies and with social assistance of victims and aggressors is the rayon section/department for social assistance and family protection, within which a specialist responsible for the prevention and combating of family violence shall be appointed.

(5) Other local-level public services shall appoint persons tasked with prevention and combating of family violence, responsible for the coordination of specific activities within their institutions and for the collaboration upon carrying out joint activities at the level of the administrative-territorial unit, based on established collaboration procedures in the field of prevention and combating of family violence cases.”

2. Article 8:

In the introductory part of paragraph (3), after the words “and of family protection” the following text shall be introduced “, through the specialist responsible for the prevention and combating of family violence ”;

in paragraph (6) section d), after the words “forensic centers” the following words shall be introduced “and of other institutions”.

3. In Article 11:

the article is supplemented with paragraph (2<sup>1</sup>) reading as follows:

“(2<sup>1</sup>)The victim is entitled to assistance for physical, mental and social rehabilitation, through medical, psychological, legal and social actions. The rendering of protective services and assistance shall not be conditioned by the victim’s willingness to testify and participate in the judicial prosecution of the aggressor. The right to privacy and the confidentiality of information regarding the victim is guaranteed.”

paragraph (3) shall read as follows:

“(3) Bodies tasked with the prevention and combating of family violence shall be bound to react promptly to any request and to inform victims about their rights, about bodies and institutions tasked with the prevention and combating of family violence; about the types of services and organization that may be addressed for help; about assistance available to the victims; about where and how can they lodge a complaint; about the procedure to be followed after lodging the complaint and about their role in such proceedings; how protection can be obtained; to what extent and in what conditions can counseling or legal assistance be accessed; whether there are risks for their life or health in case of release of an apprehended person or of a convict; whether the protective ordinance has been cancelled.”

the article is supplemented with paragraphs (5), (6) and (7) reading as follows:

“(5) The victim is entitled to free of charge primary and proficient legal assistance, in accordance with legislation on legal assistance guaranteed by the state.

(6) The victim shall be offered medical assistance in medical and sanitary institutions, in accordance with the Law on mandatory insurance for medical assistance.

(7) The victim’s privacy and identity are protected. Recording, storage and use of the victim’s personal data shall be performed in accordance with the provisions of the Law on protection of personal data.”

**SPEAKER OF THE PARLIAMENT**

**Mihai GHIMPU**

**No. 167. Chisinau, July 9, 2010.**

## APPENDIX C. CRIMINAL PROVISIONS RELATED TO DOMESTIC VIOLENCE

### CRIMINAL CODE PROVISIONS

#### Article 109. Reconciliation

- (1) Reconciliation is the act excluding criminal liability for a minor or a less serious crime and for juveniles for a serious crime, for crimes set forth in Chapters II – VI of the Special Part of the Code, as well as in cases provided by criminal procedural law.
- (2) Reconciliation is personal and produces legal effects from the moment of the initiation of a criminal investigation and the panel of judges' withdrawal for deliberations.
- (3) Reconciliation on behalf of persons deprived of their legal capacity shall be performed by their legal representatives. Persons with limited legal capacity may reconcile with the consent of the persons specified in the law.

*[Art.109 completed by Law No. 184-XVI dated 29.06.2006, in force as of 11.08.2006] [Art.109 amended by Law No. 211-XV dated 29.05.03, in force as of 12.06.03]*

#### Article 133<sup>1</sup>. Family member

A family member shall have the following meaning:

- a) in case of joint habitation: persons in relations of marriage, cohabitation, divorced persons, persons in relations of guardianship and trusteeship, their direct or collateral relatives, relatives' spouses;
- b) in case of separate habitation: persons in relations of marriage, their children, including adoptive children, children born out of wedlock and children under trusteeship.

#### Article 151. Intentional Severe Bodily Injury or Damage to Health

- (1) Intentional severe bodily injury or life-threatening damage to health or that caused the loss of sight, hearing, speech or another organ, or the cessation of its functioning, mental disease or some other form of health damage accompanied by the permanent loss of at least one-third of the capacity to work or resulting in a miscarriage or an incurable disfiguration of the face and/or adjacent areas shall be punished by imprisonment for 3 to 10 years.
- (2) The same action committed:

*[Letter a) excluded by Law No. 277-XVI dated 18.12.2008, in force as of 24.05.2009]*

- b) against a person known to be a juvenile or against a pregnant woman or by taking advantage of the victim's known or obvious helpless condition caused by advanced age, disease, physical, or mental handicap or another factor;
- c) against a person in connection with his/her performance of official or public duties;
- d) by two or more persons;
- e) by mutilation or torture;
- f) by methods dangerous to the lives and health of many persons;
- g) for purposes of profit;

*[Letter h) excluded by Law No. 277-XVI dated 18.12.2008, in force as of 24.05.2009]*

- i) from motives of social, racial or religious hatred;
- j) against two or more persons;
- k) by an organized criminal group or a criminal organization;
- l) in order to remove and/or use or sell the victim's organs or tissues;
- m) by contract;

shall be punished by imprisonment for 5 to 12 years.

*[Par. 3 art. 151 excluded by Law No. 277-XVI dated 18.12.2008, in force as of 24.05.2009]*

- (4) The actions set forth in par. (1) or (2) that cause the death of the victim shall be punished by imprisonment for 8 to 15 years.

#### **Article 152. Intentional Less Severe Bodily Injury or Damage to Health**

- (1) Intentional less severe bodily injury or damage to health that are not life threatening and did not cause the consequences specified in art. 151, which, however, are followed by a prolonged health disorder or a significant and permanent loss of less than one-third of the capacity to work shall be punished by community service for 140 to 240 hours or by imprisonment for up to 3 years.
- (2) The same action committed:
- [Letter a) excluded by Law No. 277-XVI dated 18.12.2008, in force as of 24.05.2009]*
  - b) against two or more persons;
  - [Letter c) excluded by Law No. 277-XVI dated 18.12.2008, in force as of 24.05.2009]*
  - c<sup>1</sup>) against a person known to be a juvenile or against a pregnant woman or by taking advantage of the victim's known or obvious helpless condition caused by advanced age, disease, physical, or mental handicap or another factor;
  - d) against a person in connection with his/her performance of official or public duties;
  - e) by two or more persons;
  - f) by mutilation or torture;
  - g) by methods dangerous to lives or health of many persons;
  - h) for purposes of profit;
  - [Letter i) excluded by Law No. 277-XVI dated 18.12.2008, in force as of 24.05.2009]*
  - j) from motives of social, racial or religious hatred;
  - k) by contract;
- shall be punished by imprisonment for 3 to 6 years.

#### **Article 201<sup>1</sup>. Family Violence**

- (1) Family violence, meaning deliberate action or inaction, manifested physically or verbally, committed by a family member against another family member, which provoked physical suffering following minor bodily or health injuries, mental suffering or material or moral damages shall be punished with unpaid labor for the benefit of the community from 150 to 180 hours or with up to 2 years imprisonment.
- (2) The same deed:
- (a) committed against two or more family members;
  - (b) which provoked bodily or health injuries of medium gravity
- shall be punished with unpaid labor for the benefit of the community from 180 to 240 hours or with up to 5 years imprisonment.
- (3) The same deed, which:
- (a) has caused grave bodily or health injuries;
  - (b) has determined a person to commit suicide or suicide attempt;
  - (c) has caused the victim's death
- Shall be punished with imprisonment from 5 to 15 years.

#### **Article 320. Non-fulfillment of the court decision**

- (1) Intentional non-fulfillment or failure to fulfill a court decision if it was committed after a administrative sanction was imposed, shall be punished with a fine in the amount of 200 to 300 conventional units or with community work in the amount of 150 to 200 hours, or with deprivation of liberty for up to 2 years.

- (2) Intentional non-fulfillment or failure to fulfill a court decision by a public official, as well as obstruction to fulfill it, if these acts were committed after an administrative sanction was imposed, shall be punished with a fine in the amount of 300 to 500 conventional units or with community work in the amount of 180 to 240 hours or with deprivation of liberty for up to 3 years, in all cases with the withdrawal of the right to hold certain positions or to conduct a certain activity for a period of 2 to 5 years.

### ***CRIMINAL PROCEDURE CODE PROVISIONS***

#### **Article 97. Circumstances that are established with the use of certain means of evidence**

- (1) Certain evidence confirms during criminal prosecution the following circumstances:
  - 1) Cause of death. Through conclusions of the medical-forensic exam;
  - 2) Character and degree of physical injuries during cases concerning serious, extremely serious and exceptionally serious crimes -- established by a medical-forensic examination;
  - 3) Incapacity of a person to be conscious at the moment when s/he committed a socially dangerous deed of his/her actions or lack of action and incapacity to keep them under control, due to a mental disease or temporary insanity, or due to other health deterioration or debility - stated by a psychiatric examination/evaluation;
  - 4) Incapacity of a witness to perceive and convey the circumstances which need to be established in the case due to a mental disease that s/he suffered from or to temporary mental disorder, or to other health deterioration or to debility - stated by a psychiatric examination/evaluation;
  - 5) Evidence is also required to establish whether an injured party, a suspect, accused have reached a certain age, should this constitute an important issue in that trial. This evidence can be the identity document showing the age. Should the incapacity derive from old age the evidence is a medical-forensic or psychiatric conclusion.
  - 6) Existence of criminal antecedents in case of a suspect or accused - through copies of the definitive court sentences.

#### **Article 140. Order of performance of technical scientific or medical-forensic investigation**

- (1) The criminal investigation body or the court ordering the performance of the technical scientific analysis shall establish the object of this analysis, formulates the questions that need to be answered and term for the performance of this Investigation.
- (2) The technical scientific investigation shall be performed relying on the materials and data, submitted or indicated by the court or criminal investigation body. The person entitled to do such an analysis may not be vested and shall not undertake prerogatives of a criminal investigation body or of control body.
- (3) Whenever the specialist entitled to perform the investigation finds the submitted materials or indicated information to be insufficient, he shall communicate the court or criminal investigation body with the request that they be completed.
- (4) In the event it is necessary to perform a body examination upon the indicted or upon the injured party in order to ascertain on their body traces of the offense, the criminal investigation body shall order the performance of a medical-forensic investigation and shall request the medical forensic authority competent under the law to perform such an investigation.

**Article 143. Cases of mandatory expert examination**

An expert examination shall be ordered and performed mandatory in order to ascertain:

- 1) the cause of death;
- 2) degree and nature of damages inflicted on physical integrity;
- 3) mental and physical condition of the suspect, indicted, defendant, when their responsibility and capacity to defend their right and legitimate interests in criminal proceedings are susceptible of doubts;
- 4) age of the suspect, indicted, defendant or the injured party when this circumstance is relevant for criminal proceedings and documents confirming their age are not available or are doubtful;
- 5) mental and physical status of the injured party, of the witness when doubts arise concerning their capacity to perceive correctly circumstances relevant for the criminal proceedings or to make statements on them, if on such statements may further rely exclusively or essentially the delivered ruling;
- 6) other cases when other evidence is not susceptible to establish the truth about the particular case.

**Article 165. Notion of apprehension**

- (1) Apprehension is the deprivation of liberty of a person, for a short period of time, but not more than 72 hours, in the places and conditions provided by law.
- (2) The following persons can be apprehended:
  - 1) ...;
  - 2) The accused, the condemned person who violates the conditions of the preventive measures which do not imply deprivation of liberty, taken in his/her respect, as well as the protection order in the case of family violence;
  - 3) ...
- (3) ...

*[Art.165 completed by Law No.167 from 09.07.2010, in force from 03.09.2010]*

**Article 185. Preventive Arrest**

- (1) The preventive arrest means the detention of the suspect, accused, condemned person in arrest in the places and conditions provided by the law.
- (2) The preventive arrest can be applied in cases and conditions provided by art. 176, and if:
  - 1) the suspect, accused, condemned person do not have a permanent residence on the territory of the Republic of Moldova;
  - 2) the suspect, accused, condemned person have not been identified;
  - 3) the suspect, accused, condemned person have violated the conditions of other preventive measures applied towards them or have violated the protective order in the family violence case.
- (3) ...

*[Art.185 completed by Law No.167 from 09.07.2010, in force from 03.09.2010]*

**Article 215<sup>1</sup>. Protective measures applied to victims of family violence**

- (1) The request of the victim of family violence submitted during the criminal trial to the criminal prosecution body, the prosecutor or the court, concerning threats of death, violence, deterioration or destruction of assets or other illegal acts shall be examined by the court, which is bound to order measures to ensure the protection of the victim against the suspect, the accused, the defendant, who is a family member, by issuing a protective ordinance.
- (2) Where the request is submitted to the criminal prosecution body or the prosecutor, such shall immediately forward the request to court for examination, by way of a solicitation.
- (3) Within 24 hours as of the receipt of the request the court shall issue, by way of court order, a protective ordinance, by which shall offer protection to the victim and shall apply to the suspect, the accused or the defendant one of the following measures:
  - a) an order to temporarily move out of the common abode or to refrain from approaching the victim's abode, regardless of the right of ownership over the assets;
  - b) an order to refrain from approaching the victim's whereabouts, less than a distance, which ensures the victim's safety;
  - c) an order to refrain from contacting the victim, its children, other dependants of the victim;
  - d) an interdiction to visit the victim's place of work and abode;
  - e) a limitation of unilateral disposal of joint assets;
  - f) an order to pass a medical exam of one's mental state and drug/alcohol addiction and, where the medical conclusion confirms drug/alcohol addiction, an order to apply forced medical treatment for drug/alcohol addiction;
  - g) an order to participate in a special treatment or counseling program, where the court determines that this is necessary for the reduction or elimination of violence;
  - h) an interdiction to keep and wear guns.
- (4) Protective measures shall apply for up to three months. The duration of protective measures may be extended by the court at the repeated request addressed as a result of the committal of acts of family violence or as a result of nonobservance of the conditions established in the protective ordinance.
- (5) The protective ordinance shall be immediately forwarded to the bodies of internal affairs and the social assistance body at the whereabouts of the suspect, the accused, or the defendant.
- (6) The court order for the application or extension of the protective ordinance is instantly enforceable and may be appealed in the court of higher instance.

**Article 276. Starting the criminal investigation based on victim's complaint**

- (1) The criminal investigation is started only based on the preliminary complaint of the victim in case of crimes provided for in articles: 152 para.(1), 153, 155, 157, 161, 173, 177, 179 para.(1) and (2), 185<sup>2</sup>, 193, 194, 197 para.(1), 198 para.(1), 200, 202, 203, 204 para.(1), 246<sup>1</sup>, 274 from the Criminal Code, as well as in cases of theft of the property committed by a minor, husband, relatives, constituting the damage of the tutor, or by the person who lives together with the victim or is housed by her/him. When the injured party makes up with the suspect, accused, condemned person in cases mentioned in the present paragraph, the criminal investigation is stopped. The procedure in such cases is the general one.
- (2) ...
- (5) When the injured party makes up with the suspect, accused, condemned person in cases mentioned in para. (1), the criminal investigation is stopped. The making up is personal and produces effects only if it takes place until the sentence becomes final. In cases of family violence, the prosecutor or the court shall determine whether the victim's willingness to reconcile

is expressed freely and shall ensure that the victim has had effective access to assistance and protection.

(6) ...

*[Art.276 completed by Law No.167 from 09.07.2010, in force from 03.09.2010]*



**APPENDIX D. CONTRAVENTION CODE PROVISIONS RELATED TO DOMESTIC VIOLENCE****Article 78. Deliberate slight bodily injury**

- (1) Deliberate slight bodily injury shall be sanctioned by a fine of 10 to 40 conventional units or by unpaid community work for 40 to 60 hours or by arrest for 5 to 10 days.
- (2) Deliberate slight bodily injury, maltreatment, beating and other violent actions that cause physical pain shall be sanctioned by a fine of 25 to 50 conventional units or by arrest for 10 to 15 days.
- (3) Deliberate slight bodily injury that causes a short-term health disorder or an insignificant but established loss of work capacity shall be sanctioned by a fine of 50 to 75 conventional units or by arrest for up to 15 days.

**Article 318. Failure to execute a court sentence, decision, or ruling**

Failure due to negligence to execute a court sentence, final decision or ruling within the established timeframes shall be sanctioned by a fine of 50 to 150 conventional units for individuals and by a fine of 200 to 300 conventional units for responsible persons.



**APPENDIX E. FAMILY CODE ARTICLE 53****Family Code  
No. 1316-XIV from 26.10.2000<sup>433</sup>****Article 53. The right of the child to be protected**

- (1) The child is guaranteed the observance of his lawful rights and interests.
- (2) The observance of the lawful rights and interests of the child is ensured by the parents or by the persons who replace them, and in the cases provided by the law – by the prosecutors, tutorship authority, or other entrusted bodies.
- (3) The minor who obtained the full exercise capacity until reaching the adult age defends his lawful rights and interests by him/herself.
- (4) The child has the right to protection against abuses; including against corporal punishment from the parents or of the persons that replace them.
- (5) In case of violating the lawful rights and interests of the child, including through the non-fulfillment or inadequate fulfillment by the parents (one of the parents) of the duties to bring up, raise and educate, or in case of abuse of the parents' rights, the child can address independently to the tutorship authority for the observance of his/her lawful rights and interests, and starting from 14 years old – to the court.
- (6) Persons with decision-making functions and other citizens who are aware of the existence of a danger for the life or health of the child, of violation of his/her lawful rights and interests are obliged to communicate this to the tutorship authority, by undertaking all possible efforts to protect the lawful rights and interests of the child.

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<sup>433</sup> *Official Monitor of the Republic of Moldova No.47-48/210 from 26.04.2001*



## APPENDIX F. COMMENTARY ON THE LAW ON PROTECTION FROM DOMESTIC VIOLENCE

### Comments by The Advocates for Human Rights on the *Law on Preventing and Combating Family Violence in the Republic of Moldova*

The Advocates for Human Rights (hereinafter “The Advocates”) reviewed the following Law of the Republic of Moldova:

- *Law on Preventing and Combating Family Violence* (Law No. 45-XVI of 1 March 2007) (hereinafter “the Law” or “the Moldovan Law.”)

The Advocates bases its comments on an unofficial translation of the Law, as provided by the OSCE Mission to Moldova, April 2008 and on an unofficial translation of the Law incorporating amendments from Law 167, provided by the Women’s Law Center in September 2011.

The Advocates congratulates the Republic of Moldova for undertaking the difficult but critically important task of enacting legislation to protect its citizens from domestic violence. In doing so, the Republic of Moldova took an important step toward fulfilling its positive obligations under CEDAW and other international treaties it has ratified. These obligations include guaranteeing an individual’s right to be free from violence and a state’s responsibility to protect individuals not only from violations of their rights by government entities but also against acts of violence committed by private entities.

In addition to implementation of the domestic violence Law, the Advocates strongly recommends that the Republic of Moldova actively monitor the implementation of the Law to expose unintended obstacles to the effective protection of victims. Monitoring will allow for adjustment of practices or policies to address obstacles and, if necessary, permit additional amendments to the Law.

#### **I. General Review of the Moldovan Law**

The Advocates recommends that the Republic of Moldova continue to revise the Law to best promote victim safety and achieve offender accountability. The Advocates recommends that each provision of the Law embodies the fundamental human rights principle that women have the right to be free from violence, actual or threatened, and to have a remedy for domestic violence so that they no longer have to endure such violence in silence. In addition, the government should ensure that offenders are held accountable for domestic violence. Perpetrators of domestic violence must not be allowed to continue to commit acts of violence with impunity. Laws should recognize that it is important to hold offenders accountable for violence with serious consequences for their acts.

In countries where domestic violence laws have been in place for twenty or thirty years, domestic violence laws have evolved to include three primary components:

- Civil law provisions that promote the safety of domestic violence victims (orders for protection, hotlines, shelters, and funding for other victims services);
- Criminal law provisions that allow the government to prosecute perpetrators of domestic violence (laws that prohibit assault of an intimate partner, terroristic threats, criminal sexual conduct, interference with an emergency call, and other criminal laws); and
- An infrastructure to promote prevention of domestic violence (government offices to coordinate and award funding to the private sector).

Each of the components – Protection, Prosecution, and Prevention – is important for a government to undertake when addressing domestic violence. The Republic of Moldova’s Law has done an excellent job of addressing these key components.

However, governments must sometimes prioritize one component over another when resources are scarce. When that is the case, it is vital that resources are directed to protecting domestic violence victims. Without such protection, victims are often unable to cooperate in the prosecution of the perpetrators of domestic violence. In addition, any prevention efforts must address the immediate need for the safety and security of domestic violence victims.

The Republic of Moldova should ensure that the Law includes and provides for the following provisions, at a minimum:

#### Civil

- A fully developed civil *emergency* order for protection; and
- A fully developed long-term order for protection civil remedy.

#### Criminal

- A criminal offense for violation of civil orders for protection with a cross-reference to any relevant provisions of the criminal laws, such as punishment for various levels of offenses;
- Clear language in the criminal laws and criminal procedure codes that makes domestic assault a crime, including those assaults resulting in low-level injuries such as bruises, scrapes, cuts, and burns;
- Clear language in the criminal laws and procedure codes that obligates law enforcement and prosecutors to pursue domestic violence cases, including those involving low-level injuries; and,
- Enhanced penalties for multiple violations of an order for protection and for repeated assaults. Repeated low-level assaults should result in serious felony-level sanctions.

#### The Scope of Implementation of the Law in terms of Persons

The Law should provide a clear definition of domestic violence to include physical harm, bodily injury or assault, the infliction of fear of imminent physical harm, bodily injury or assault or terroristic threats, and criminal sexual conduct including sexual assault within a marriage.

In the context of criminal sanctions and civil protection order remedies, drafters should consider limiting the definition of domestic violence to physical harm, bodily injury, and the fear of imminent danger for his/her own or for a third party's life or health. Inclusion of psychological and economic violence in the definition of domestic violence has, in some cases, had the unintended consequence of creating opportunities for perpetrators to counter-claim psychological or economic abuse against those toward whom they have been physically violent. For example, an angry or disgruntled violent abuser may seek protection measures against his wife for using property owned by him. Or, a perpetrator may claim that physical violence is an appropriate response to an act he sees as economically disadvantageous to him. Claims of psychological and economic violence may also be very difficult to prove in legal proceedings.

The applicability of the Law should be expanded to include those who are or have been in intimate relationships regardless of present or past marital status and regardless of cohabitation.<sup>434</sup>

<sup>434</sup> United Nations, Department of Economic and Social Affairs and Division for the Advancement of Women, *Handbook for Legislation on Violence against Women* (2010), Section 3.4.2.2., available at <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>. The Council of Europe Convention on preventing and combating violence against women and domestic violence (hereinafter "Istanbul Convention") defines domestic violence as any physical, sexual, psychological, or economic violence that occurs within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim. See Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (2011), Art. 3, available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>.

The current Moldovan Law does not apply to divorced persons who do not live together or to unmarried intimate partners who do not live together.

### Protective Measures

As stated above, to best preserve victim safety and achieve offender accountability, the Law should provide for two types of orders – 1) civil/administrative (Domestic violence laws should always provide for a civil remedy, often called an order for protection); and 2) criminal. The order for protection is a unique remedy for domestic violence victims that is distinct from accountability for offenders under the Criminal Code. International standards, including those from the United Nations and the Council of Europe, encourage governments to create this civil remedy for domestic violence victims. The goal of protection orders is to ensure the immediate safety for victims and their children and security in their homes. Ideally, a civil proceeding for a protective order is a quick and efficient process. Orders for protection should be flexible and tailored to the needs of the victim. Laws should allow victims to apply for this protection independently, without an attorney or a government representative, to the courts or police. Victims should *not* be required to file a police report to be eligible for a civil order for protection.

The civil/administrative remedy, under Moldovan Law, should provide for both an emergency order (often called an “*ex parte* order”) for protection and an order that is issued after a full hearing. The Law should direct authorities, either the courts or the police, to immediately issue emergency *ex parte* orders for protection upon application by the victim of domestic abuse. Such emergency “*ex parte*” orders for protection should be issued without a hearing in emergency situations. Where an “*ex parte*” order for protection is issued, either the petitioner or the respondent may request a later hearing. Thus, with a civil order, the respondent’s right to request a hearing serves to protect the respondent’s rights. If domestic abuse is found at the subsequent evidentiary hearing, the court should issue a longer-term order for protection.

In cases where no emergency exists, a longer-term “order for protection” should be issued after a full evidentiary hearing.

Any preventive measure or protection order should be extended if there is a reasonable fear of physical harm. There should be no requirement of actual and repeated domestic violence or a violation of the protection order to obtain an extension of the protective order’s period of validity.

The violation of a civil order for protection should always be a criminal offense.<sup>435</sup> If a batterer repeatedly violates the provisions of the order, the criminal penalties should become more severe with each violation. The safety of the victim and the victim’s children should be the most urgent priority of the Law.

These civil/administrative orders should be separate and distinct from no contact orders issued in the criminal process and should be under the control of the victim. The Moldovan Law should not provide any right to appeal either the civil/administrative order for protection or a criminal no-contact order. Also, the Moldovan Law should provide the respondent the right to petition the court to modify the order only in limited circumstances and only where the court has made an independent assessment of the risk of harm to the victim.

A criminal no-contact order should remain in effect during the duration of the criminal proceedings. The civil/administrative order should remain in effect for at least one year. In cases of elevated risk of harm that should be specifically outlined in the Law, the order should remain in effect indefinitely.

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<sup>435</sup> See United Nations, Department of Economic and Social Affairs and Division for the Advancement of Women, *Handbook for Legislation on Violence against Women* (2010), Section 3.10.9, available at <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>.

## Criminal Laws

The Advocates recommends that legislation clarify that law enforcement and prosecutors are obligated to pursue all cases of domestic violence, including assaults resulting in low-level injuries such as bruises, cuts, scrapes, and burns.<sup>436</sup> Legislation should ensure that crimes involving domestic violence are not treated less seriously than other crimes.<sup>437</sup> In fact, many jurisdictions increase criminal penalties for repeated domestic violence offenses, even if they involve low-level injury. For example, three or more convictions for assaults involving low-level injury may become a felony with more severe sanctions. The Moldovan Law should communicate to the public zero tolerance for violence.

In addition, other criminal acts, such as assault, terroristic threats, stalking, criminal sexual conduct, and interference with an emergency call – acts that are common in domestic violence cases – should all be considered to be criminal offenses when they occur between family members or intimate partners.<sup>438</sup>

Whether an individual is convicted of a violation of an order for protection or another criminal domestic violence-related offense, that individual should always be prohibited from possessing a pistol or a firearm.

Moreover, the application of criminal laws should never prevent the implementation of civil preventive measures. Although the criminal process is very important and promotes offender accountability, victim safety can be very much at risk during the process. A civil preventive measure that serves to remove the batterer from the home can provide the victim greater protection if the preventive measure is long enough and provides supportive measures, such as temporary support and child custody. Also, civil preventive or protective measures should never replace or prevent the implementation of criminal law that sanctions batterers for violent conduct. Both processes and remedies should be available and can proceed simultaneously in domestic violence cases.

## Victim Bill of Rights and Infrastructure to Support Services

The Moldovan Law should also include a statement of victims' rights. This statement must promote victim safety, agency, and assistance, and prevent the re-victimization of the victim. The Moldovan Law should provide important victim services, such as a free, 24-hour hotline that is accessible from anywhere in the country and staffed by persons trained in domestic violence issues; shelter/safe spaces for every 10,000 members of the population, located in both rural and urban areas, which can accommodate victims and their children for emergency stays and which will help them find a refuge for longer stays; long-term housing assistance for victims as they work to attain economic independence from perpetrators; a crisis center for every population of 50,000 people, with trained staff to provide support, legal advice, and crisis intervention counseling for all victims, including specialized services for particular groups such as

<sup>436</sup> See Minnesota Statute Section 609.2242 (2008) available at <https://www.revisor.leg.state.mn.us/statutes/?id=609.2242>; See also United Nations, Department of Economic and Social Affairs and Division for the Advancement of Women, *Handbook for Legislation on Violence against Women* (2010), Section 3.8.2, available at <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>.

<sup>437</sup> See United Nations, Department of Economic and Social Affairs and Division for the Advancement of Women, *Handbook for Legislation on Violence against Women* (2010), Section 3.8, available at <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>.

<sup>438</sup> See Minnesota Statute Section 518B.01, subd. 2(1)(3) available at <https://www.revisor.leg.state.mn.us/statutes/?id=518B.01>; see also United Nations, Department of Economic and Social Affairs and Division for the Advancement of Women, *Handbook for Legislation on Violence against Women* (2010), Section 3.11.3., available at <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>.



immigrants; and access to free-of-charge health care for immediate injuries and long-term care including sexual and reproductive health care, emergency contraception, and HIV prophylaxis in cases of rape.<sup>439</sup>

The Moldovan Law should also provide adequate and consistent funding for victim services. In many countries, domestic violence legislation established important measures but lacks the funding to actually bring the law into reality. This lack of sustained government funding has stalled implementation in many countries, with dire consequences for victims. Thus, it is imperative that the Moldovan Law address funding to ensure that it is effective.

## **II. Specific Comments on the *Draft Law on Preventing and Combating Family Violence***

The Advocates for Human Rights offers the following specific comments on the Law on Preventing and Combating Family Violence in Moldova. Our comments are based upon information found in the Model State Code, the Istanbul Convention, and the U.N. Framework as well as other resources.

### **The Title and Scope of the Law**

The Advocates recommends that the title of the Law be changed to Domestic Violence rather than Family Violence. **All Chapters and Articles should omit the term “family violence” and should instead use the term “domestic violence” to provide a clear indication that the Law is intended to address violence on the part of an aggressor and not impute fault to the entire family.**

The goal of the Moldovan Law should be to provide victim safety and to promote aggressor accountability. The language regarding protecting and supporting the family should be removed as it is often interpreted as a priority for family reunification and not victim safety.

## **CHAPTER 1. GENERAL PROVISIONS**

### **Article 2. Principal terms**

In defining “physical violence,” the Advocates recommends that the Law provide a clearly defined description of the prohibited behavior and avoid listing separate behavioral acts. If certain acts are described, others that are also examples of physical violence may be eliminated from consideration. The Advocates recommends a more general yet clear definition of harm such as: “an act done with intent to cause fear in another of immediate bodily harm or death; or the intentional infliction of or attempt to inflict bodily harm upon another.” The Advocates recommends that “bodily harm” be defined to include “physical pain or injury, illness, or any impairment of physical condition.” The Advocates recommends elimination of “other similar actions” because the phrase is vague and would be difficult to enforce.

The Advocates recommends that the government of the Republic of Moldova redefine its current definition of domestic violence with regard to psychological, spiritual, economic, and moral violence. In other countries, including psychological or economic violence in definitions of domestic violence has proven problematic and even dangerous for victims. Allegations of these types of harm have in some cases had the unintended consequence of creating opportunities for perpetrators to counter-claim psychological or economic abuse against those they have been violent towards. For example, an angry or disgruntled violent abuser may seek protection measures against his wife for using property owned by him. Or, a perpetrator may claim that physical violence is an appropriate response to an act he sees as economically disadvantageous to him. In addition, these types of harm are difficult to prove and, therefore, make it difficult to hold offenders accountable.

<sup>439</sup> See United Nations, Department of Economic and Social Affairs and Division for the Advancement of Women, *Handbook for Legislation on Violence against Women* (2010), Section 3.6.1, available at <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>.

Rather, The Advocates recommends that the government of the Republic of Moldova incorporate a concept of “coercive control” in addition to incidents of physical violence instead of psychological, economic, moral, or spiritual violence. More specifically, domestic violence is an act or patterns of acts by which an adult partner seeks to coerce and/or control another by intent, design, or consequences. *Coercive control*, for the purposes of this Law, should be defined as “an act or a pattern of acts of assault, sexual coercion, threats, humiliation, and intimidation that is used to harm, punish, or frighten a victim. This control includes a range of acts designed to make a victim subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance, and escape, and regulating their everyday behavior.”

The Advocates commends Moldova for recognizing the significance of sexual violence and, in particular, the recognition of sexual violence within a marriage as a form of domestic violence.

The Advocates recommends that the list of potentially illegal acts after “illegal sexual conduct with a minor family member” be eliminated. The Advocates also recommends that forced prostitution be removed from the domestic violence act and placed into a separate act on sex trafficking and that sexual harassment be removed from the domestic violence act and be placed in a separate act on sex harassment.

In the definition of “aggressor,” it is important to determine the primary aggressor. When responding officers are confronted with complaints from more than one person arising from the same incident of domestic violence, the officer should be encouraged to determine the principal physical aggressor by considering: prior complaints of domestic violence, the relative severity of injuries inflicted by each person, the likelihood of future injury from domestic violence to each person, and whether one of the persons acted in defense of self or others.

### **Article 3. Applicability of this law**

In defining relationships encompassed by the Law, the Law should include spouses and former spouses; persons who presently reside together or **who have resided together in the past**; persons who have a child in common regardless of whether they have been married or have lived together at any time; a man and woman if the woman is pregnant and the man is alleged to be the father regardless of whether they have been married or have lived together at any time; and persons involved in a significant romantic or sexual relationship **regardless of cohabitation**. Many acts of domestic violence occur in relationships in which the parties do not live together.

### **Article 4. Legal Framework**

As indicated above, the article should be limited to cases of domestic violence, substituting “domestic violence” for “family violence” in this Article.

### **Article 5. Basic principles of preventing and combating family violence**

The substitution of “domestic violence” for “family violence” will more clearly reflect the goal of the Law.

The Advocates commends the Republic of Moldova for recognition of the importance of the rule of law, equality, confidentiality, access to justice, protection and security of victims, and the need for cooperation to achieve the goals of holding offenders accountable and victims safe.

## CHAPTER II. AUTHORITIES AND INSTITUTIONS RESPONSIBLE FOR PREVENTING AND COMBATING FAMILY VIOLENCE

### Article 7. Authorities and institutions responsible for preventing and combating family violence

The Advocates commends the Republic of Moldova for recognizing the need for a coordinated community response to domestic violence. Research indicates that coordination of the responses of those in the community who come into contact with domestic violence issues can significantly increase victim safety and batterer accountability.<sup>440</sup>

### Article 8. The role of central and local public administration authorities

#### Article 8(1)(a)

In order to ensure that victims are protected and assisted, the Law should specify that all programs be fully funded by the Moldovan government. If resources are scarce, programs for victims should take priority over programs for aggressors.

#### Article 8(2) and (3)

The Advocates recommends that fully funded local shelters for victims of domestic violence be included in this section, establishing responsibilities of local authorities. The presence and availability of domestic violence shelters reduces incidents of domestic violence, provides aid and assistance to victims of domestic violence, and ensures immediate safety for victims.

While the Advocates commends Moldova for creating programs for victim of domestic violence, it is important that victims of domestic violence be allowed to choose whether and when to seek programming to address the effects of domestic violence in their lives. If victims are mandated to attend treatment or therapy programs, they may be reluctant to report acts of abuse. Victims of domestic violence need services, not rehabilitation.

Article 8 contains several references to treatment and rehabilitation programs for offenders. Treatment programs for offenders should be discussed separately from those designed to assist victims. If resources are scarce, victim services should be the priority. Offenders should be mandated to attend treatment and pay for that treatment so that funding is not diverted from programs needed to ensure the safety of victims and their children. Moreover, the Moldovan Law should state that any expenses related to the aggressor's participation in programs and services should not be borne by the victim or the victim's children but rather should be paid for by the aggressor.

Article 8 should contain a requirement that social assistance and family protection sections/departments provide job training opportunities for victims and transitional, subsidized housing for victims of domestic violence when they have left shelter. This will ensure that victims who wish to become independent can do so.<sup>441</sup>

<sup>440</sup> The Istanbul Convention recommends training for relevant professionals on prevention and detection of domestic violence as well as training on equality between women and men, the needs and rights of victims, and how to prevent secondary victimization. The Convention specifically encourages training on coordinated multi-agency cooperation, allowing for comprehensive and appropriate handling of referrals in cases of domestic violence. See Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (2011), Art. 15, available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>.

<sup>441</sup> The Istanbul Convention recommends that services include legal and psychological counseling, financial assistance, housing, education, training, and assistance in finding employment. See Council of Europe Convention  
*Footnote continued on next page . . .*

**Article 8(4) and (5)**

Article 8(4) and (5) respectively require teachers and medical professionals to report all cases of domestic violence to the police. Mandatory reporting of domestic violence cases should be confined to cases wherein the victim is a minor or a vulnerable adult or when a firearm is used. All other cases should be reported only with the consent of the victim. The safety of domestic violence victims is compromised at the time that the violence is reported, and victims know best when to report the violence. And, victims should be able to seek medical treatment with the assurance that it will be confidential or they may not seek needed care.

Article 8 includes reference to child victims of domestic violence. Research indicates that child witnesses to domestic violence are impacted significantly both immediately and long term. Children in homes where there is domestic violence tend to do less well in school, are more likely to become violent adults, and tend to suffer psychological damage.

However, it is important to distinguish child abuse, in which an adult inflicts physical injury against a child, from the collateral harm caused to a child as a result of being a witness to domestic violence between intimate partners with whom the child resides. The Moldovan Law should provide protections against child abuse in separate legislation

Furthermore, officials who implement the Law should take precautions that victims of violence are not re-victimized by removal of their children. Government intervention should be directed at the violent offender and should prioritize maintaining the relationship between the children and the non-violent parent.<sup>442</sup>

Article 8 recommends the organization of awareness campaigns. The Advocates strongly encourages campaigns of this nature. Communities in every country have long considered domestic violence to be a private matter and the public has not been encouraged to identify signs of domestic violence. Public education programs that encourage communities and families to support victims of violence and batterers to be held accountable for their behavior are commendable and to be encouraged. The Advocates recommends that Moldova provide training to those preparing awareness programs to ensure that accurate information is disseminated and that public safety is enhanced through the programming so that campaigns promote and ensure the main goals of victim safety and aggressor accountability.

Article 8(5) requires that medical institutions of all types and levels provide programs and services for aggressors and ensure the completion of such programs by the aggressors. Only professionals who have been trained in best practice methods should undertake aggressor intervention programs. The programs' central focus should be victim safety and offender accountability. For example, programs should be prepared to notify victims of aggressor intent to harm, notify aggressors that there are no confidentiality guarantees, and never support mediation between victim and aggressor.

**Article 8(6)**

Article 8 should state that the written report of police should detail the event, allegations, injuries, statements of parties and witnesses, action taken by the police, and the reasons for the action taken.

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on Preventing and Combating Violence Against Women and Domestic Violence (2011), Art. 20, available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>.

<sup>442</sup> The Istanbul Convention states that parties should ensure that the exercise of visitation or custody right does not jeopardize the rights and safety of victims. See Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (2011), Art. 31, available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>.

Police should be encouraged to photograph any injuries and other physical evidence that documents the incident.<sup>443</sup>

In Article 8 Section 6 (c), the inclusion of child victims may be confusing. The victim of domestic abuse should not be deprived of custody of her children. The Law should reflect that removal of the children from the non-violent parent re-victimizes the victim and discourages reporting. The Law should provide services for children who witness domestic violence. Protections against child abuse should be provided for in legislation separate from legislation against domestic violence to avoid confusion.

The goal of Article 8 Section 6 (e) is unclear. If authorities are monitoring compliance with a court order to stay away from the victim and her residence, then the Advocates commends Moldova for enacting this provision. If, however, (e) is intended as a substitute for criminal accountability, then the Advocates recommends deleting this section as unnecessary. If the section is intended to monitor the aggressor's compliance with court orders, then the section should be amended to state that goal and purpose.

Police responsibility should focus on arrest and accountability for violent offenders. Requiring that they focus on prevention efforts may distract them from their primary duty.

Article 8 Section 6(f) should state clearly that police responding to a report of domestic violence are to remove the primary aggressor. In addition, measures should be taken to ensure assessment of lethality risk, seriousness of the situation, and the risk of repeated violence.<sup>444</sup>

Section 6 should also require the police to arrest the aggressor for violating the order for protection and to report the violation to the prosecutor.

The Moldovan Law should provide for funding for training of law enforcement in the implementation of the Law as well as monitoring the effectiveness of the Law.

### **Article 9. The role of the Penitentiary Institutions Department**

If resources are scarce, the Moldovan Law should not direct valuable funding away from victim services in order to fund programming for aggressors. The goal of the Moldovan Law should be to provide victim safety and to promote aggressor accountability.

### **Article 10. The role of the centers/services for victim and aggressor rehabilitation**

#### **Article 10(1)**

In describing the purpose of the Center, the term "safety" should replace the term "rehabilitation." Government intervention should focus primarily on ensuring victim safety, not rehabilitation, of victims. The Advocates commends the government of the Republic of Moldova for including a comprehensive list of services for victims at the Centers.

#### **Article 10(2)**

Centers should be established under the guidance of victim service organizations that are most likely to identify and understand victims' needs. The government of the Republic of Moldova should fund the

<sup>443</sup> The Istanbul Convention states that investigations, as well as judicial proceedings, should be carried out without undue delay while also taking into account the rights of the victim during all stages of the criminal proceeding. See Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (2011), Art. 49, available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>.

<sup>444</sup> See Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (2011), Art. 51, available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>.

establishment of at least one shelter per 10,000 persons and one advocacy and counseling center for every 50,000 women.<sup>445</sup>

#### **Article 10(3) (a)**

The Moldovan Law should eliminate the phrase “resolution of family situation.” The Advocates recommends that victim services be provided so long as there is a demonstrated need, and not be limited to three months in duration.

#### **Article 10(3) (c)**

The Advocates commends the drafters’ recognition that the adult victim of domestic violence must be able to make her own decision with respect to the assistance she receives. It is important that the drafters clarify that the designation of public institutions, such as the *Center*, do not interfere with the privacy and autonomy of the victims of violence and that all services are only provided with the consent or at the request of the victim.

The drafters should ensure that protection orders address the issue of child custody for the time period preceding a full determination on the domestic violence at issue. Temporary custody of children should be awarded to the non-violent parent, and support to the non-violent parent should be ordered.<sup>446</sup>

#### **Article 10(4)**

The Law should require the regulations to be completed within six months of the enactment of the Law.

#### **Article 10(5)**

The Moldovan Law should provide funding in the annual Republic of Moldova budget so that actions by all ministerial, state, and local bodies under this Law may be implemented. Specifically, the government of the Republic of Moldova should provide funding to non-governmental organizations and local authorities that provide these services and shelters to victims of domestic violence. Experience has shown that adequate and regular government funding rather than reliance upon local budgets provides the most reliable shelters and services for victims and enhances victim safety.

#### **Article 10(8)**

The Law should require that aggressors be financially responsible for the cost of their own treatment and that this responsibility is not borne directly or indirectly by victims or victim’s children. When resources are scarce, it is crucial that financial resources be focused on victim safety and that aggressors assume the financial costs of their rehabilitation.

### **CHAPTER III. MECHANISM FOR THE RESOLUTION OF ACTS OF FAMILY VIOLENCE**

#### **Article 11. The victim’s right to protection**

<sup>445</sup> See United Nations, Department of Economic and Social Affairs and Division for the Advancement of Women, *Handbook for Legislation on Violence against Women* (2010), Section 3.6.1, available at <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>.

<sup>446</sup> The Istanbul Convention states that incidents of domestic violence should be taken into account in determining custody and visitation rights of children. It also calls for measures to ensure the exercise of visitation or custody does not jeopardize the rights and safety of the victim or children. See Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (2011), Art.31, available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>.

**Article 11(2)**

The Law should ensure that citizens are encouraged, but not mandated, to report, and that authorities focus enforcement efforts toward holding offenders accountable and protecting victim safety. Victims should receive adequate and timely information on available support services and legal measures in a language they understand.<sup>447</sup>

**Article 11(2)<sup>1</sup>**

The Advocates commends the government of the Republic of Moldova for stating that a victim's right to services must not be conditioned on the victim's participation in the judicial process. This is an important guarantee of victim safety and protection. Likewise, The Advocates commends the government of the Republic of Moldova for clearly stating the victim's right to confidentiality.

**Article 11(3)**

This article should be specifically addressed to police and prosecutors. In addition, the Moldovan Law should clearly outline the specific duties of police officers upon receiving a report of domestic violence. The efforts of officials exercising preventive control are best focused on enforcement and ensuring the safety of the victim. In addition to the duties outlined in Article 11(3), the Law should include provisions such as the ones found in the U.S. Model State Code on Family Violence outlining the duties of law enforcement officers, including, *inter alia*:

- 1) Taking action necessary to provide for the safety of the victim or of any household member;
- 2) Confiscating any weapon involved in the alleged domestic violence;
- 3) Confiscating any firearm owned or possessed by the aggressor regardless of whether the firearm was used in an act of domestic violence;
- 4) If the victim so requests, transporting or obtaining transportation for the victim and any child to a shelter or place of safety;
- 5) Assisting the victim in removing essential personal effects;
- 6) Document in a written report a summary of the call including a description of the assault and the condition of the victims;
- 7) Document any injuries suffered by the victim through photographs and copies of medical reports, if appropriate; and,
- 8) Assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility.<sup>448</sup>

The Moldovan Law should require that law enforcement must respond to and produce written reports on all claims of domestic violence. The Law should require that when a claim is submitted that police interview the victim and the accused separately at the scene of the reported assault. The inspection report should include a notation regarding whether a weapon (and the type of weapon) was used. The report should document evidence of strangulation (the impeding of normal breathing or circulation of blood) that is common in domestic violence cases, life threatening, and highly indicative of future risk of lethality. It should also document the presence of children and the report of the victim or others that there has been a history of assaults by the accused or threats to kill the victim or the victim's children by the accused. This information is an indication that there is an increased risk of more serious harm to the victim, and the legal authorities at every level should consider this risk in their response. Research has

<sup>447</sup> See Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (2011), Art. 19, available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>.

<sup>448</sup> See National Council of Juvenile and Family Court Judges, Family Violence: A Model State Code (1994), Section 204, p. 4, available at [http://www.ncjfcj.org/sites/default/files/modocode\\_fin\\_printable.pdf](http://www.ncjfcj.org/sites/default/files/modocode_fin_printable.pdf).



documented a number of indicators of increased risk.<sup>449</sup> The Moldovan Law should also include a provision for notifying victims of the resources available to them. Finally, reports made by agencies other than law enforcement should be filed with law enforcement.

#### **Article 11(4)**

Drafters should omit Article 11(4) addressing mediation. Using mediation in domestic violence cases diminishes aggressor accountability for violent behavior and reflects an assumption that both parties are equally at fault for violence. It also may further endanger victims of domestic violence because, if seen as an alternative to criminal prosecution, it may allow for violent aggressors to avoid criminal prosecution and sanctions for their behavior. Finally, mediation is based on an assumption that both parties in a relationship have equal power to negotiate. This is not usually true in the cases of domestic violence and mediation may actually present additional risks of danger to victims.<sup>450</sup>

#### **Article 11(5)**

Drafters should amend Article 11(5) to provide that victims of domestic violence are entitled to free legal assistance regardless of income and for all types of proceedings, including obtaining a protective order.

#### **Article 12. Persons who may submit claims of family violence**

The Moldovan Law should clearly state that it is only the victim who has the right to file a petition for a civil/administrative order for protection. At a minimum, the consent of the victim should be required if the application for a protective measure is submitted by associations of civil society, established authorities, public employees, or other entities or persons. The victim's wishes should be the final factor in determining who may apply for a civil/administrative order for protection because victims are most often the best judges of the dangers presented to them by violent offenders. Research shows that these dangers increase when a victim seeks help from authorities, including when the victim applies for protective measures. If the victim is a minor or a vulnerable adult, others should have the right to file for an order for protection.

A different standard should apply in the context of criminal no contact orders, where the discretion of the public prosecutor and the court should take precedence. In a criminal context, the integrity of the criminal justice system may require that the court issue a criminal domestic abuse no contact order regardless of the victim's wishes.

#### **Article 13. Submittal of claims**

The Moldovan Law should require that all locations at which a claim of domestic violence can be submitted should provide a private space for victims, standard forms for requests for orders for protection, and specially-trained administrative assistants to help victims complete the forms and submit them to court.

The Advocates commends the exclusion of a fee for submission of domestic violence claims.

<sup>449</sup> See Assessing Risk Factors for Intimate Partner Homicide, *available at* <http://www.ncjrs.gov/pdffiles1/jr000250e.pdf>.

<sup>450</sup> The Istanbul Convention states that legislation should prohibit mandatory alternative dispute resolution processes, including mediation or conciliation. See Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (2011), Art. 48, *available at* <http://conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>.



#### **Article 14. Examination of the claim**

Unless otherwise identified in Moldovan law, this Law should clarify the evidentiary requirements for issuance of a civil emergency order for protection and a longer-term order. The Advocates recommends that emergency orders be issued when applicants allege credible evidence of an immediate and present danger of domestic abuse. Longer-term orders should be issued when the court finds the existence of domestic abuse. No evidence of immediate danger should be required.

The Moldovan Law should explicitly state that independent evidence, in addition to the statement or testimony of the battered woman, should not be required in any proceeding.

In Article 14(3), the drafters should clarify the phrase “within one workday” which, although an appropriately brief period, is somewhat ambiguous. It would be best if the Law clearly stated “immediately but no more than 24 hours after the report of violence,” which not only clarifies the exact time but also conveys the message that immediate action is needed in emergency situations.

#### **Article 15. Protective measures**

The Moldovan Law should include a provision that clarifies that the protective order becomes effective upon signing by the court. Violation of the order should be a crime.

The Moldovan Law should ensure that the aggressor is served with a copy of the order for protection. The court or other law enforcement authorities and not the victim herself should effectuate the service or delivery. This section should also include a provision for alternate means of service upon the aggressor in case the aggressor avoids service or cannot otherwise be reached. For example, the Law can provide for service by mail.

The Moldovan Law should provide that protection orders award temporary child custody to the non-violent parent and ongoing financial support to the non-violent parent. The Law should also allow the courts to enter a protection order as to the child. The conditions for a temporary visitation schedule should be very clearly described so that the protection order is not inadvertently violated and that the aggressor does not take advantage of visitation with the children to further victimize the victim. Clarifications should be made as to how, when, and where the aggressor will visit the children, whether it will be supervised visitation and, if so, by whom, and how the exchange of children should take place once visitation time is completed.

#### **Article 15(1)(j)**

The Moldovan Law should prohibit the aggressor from possessing or owning firearms in any way and should eliminate the vague terms “keeping or handling.”

#### **Article 15(3)**

The Advocates recommends that the protective measures specified in paragraph one of Article 15 be effective for up to one year, which has been shown to best serve the interests of protecting the victim and ensuring aggressor accountability. In cases of elevated risk of harm that should be specifically outlined in the Moldovan Law, the order should remain in effect indefinitely.

The Law should clearly state that the right to extend the order for protection should also be allowed based upon a reasonable fear of physical harm so that a victim does not have to be re-injured or an order violated for it to be extended.

The Moldovan Law should provide the respondent the right to petition the court to modify the order only in limited circumstances and only where the court has made an independent assessment of the risk of harm to the victim.<sup>451</sup>

### Article 15(5)

The Law should state to whom violations of the protective measures should be reported, and the responsibility to pursue violations of the protective measures should be clearly delegated.

### Article 16. Funding

The Law should state that the Moldovan government is responsible for funding centers for victims, and if resources are scarce, centers for victims should take priority over centers for aggressors. The drafters should ensure that assistance applies only to victims and not aggressors and that the aggressors themselves are responsible for court-ordered treatment costs. Moreover, the Moldovan Law should state that any expenses related to the aggressor's participation in programs and services shall not be borne by the victim or the victim's children but rather should be paid for by the aggressor.

This Article should include funding for training and monitoring of the implementation of the Law. The Law should explicitly require training and funding for training for police, prosecutors, and all other government bodies and civil society participants involved with addressing domestic violence. For police and prosecutors, that training should include specialized techniques in evidence gathering, case preparation, and presentation in domestic violence and sexual assault cases.

### Article 17. Sanctions

The language in Article 17(1) is vague and can lead to impunity for offenders. The sanctions for non-observance of the protective order should be clearly stated. All violations of a protective order should be a crime.<sup>452</sup> Repeat violations of a protective order should be an aggravated offense.<sup>453</sup>

Article 17(3) should contain provisions establishing a complaint procedure. It should also contain provisions establishing an independent and regular monitoring of the implementation of the Law.<sup>454</sup>

<sup>451</sup> The Istanbul Convention states that restraining or protection orders should be: (1) available for immediate protection, without undue financial or administrative burdens placed on the victim; (2) issued for a specified period or until modified or discharged; (3) where necessary, issued on an *ex parte* basis which has immediate effect; (4) available irrespective of, or in addition to, other legal proceedings; and (5) allowed to be introduced in subsequent legal proceedings. See Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (2011), Art. 53, available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>.

<sup>452</sup> See United Nations, Department of Economic and Social Affairs and Division for the Advancement of Women, *Handbook for Legislation on Violence against Women* (2010), Section 3.10.9., available at <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>.

<sup>453</sup> See United Nations, Department of Economic and Social Affairs and Division for the Advancement of Women, *Handbook for Legislation on Violence against Women* (2010), Section 3.11.3., available at <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>.

<sup>454</sup> See United Nations, Department of Economic and Social Affairs and Division for the Advancement of Women, *Handbook for Legislation on Violence against Women* (2010), Section 3.3., available at <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>.

## APPENDIX G. SUMMARY OF RELEVANT COMMUNICATED CASES FROM THE EUROPEAN COURT OF HUMAN RIGHTS

### T.M. and C.M. v. Moldova

No. 26608/11

Communicated Case

#### FACTS AND PROCEDURAL HISTORY:

Ms. T.M. was married to M.M. since 2001. C.M. was born from that marriage in 2002. T.M. and C.M. are mother and daughter, both Moldovan nationals. M.M. became involved in gambling and became aggressive toward both T.M. and C.M. T.M. filed for divorce on 25 February 2010. The Chisinau Court of Appeal divided the shared apartment, granting  $\frac{3}{4}$  to T.M. and  $\frac{1}{4}$  to M.M. After the decision M.M. became more aggressive.

On 22 June 2010 T.M. complained about verbal violence by M.M. He was sanctioned with a fine.

On 5 September 2010 M.M. beat T.M. and caused bruises to the child. A medical report established T.M. had two hematomas on her lower lip and a defect on her teeth. Another medical report established C.M. had bruises on her right hand.

On 1 April 2010 T.M. requested an order for protection. T.M. asked prosecutors to investigate M.M. but the prosecutor rejected the request, saying the medical evidence did not cause damage to their health, a requirement for the offense of family violence. The decision was challenged before the Prosecutor General's Office.

On 11 April 2010 the Buiucani District Court adopted a protection order, requiring M.M. to leave the home temporarily and avoid coming within 100m of T.M. and C.M., including their places of work and study. The order was not sent to the relevant authorities and T.M. did not receive a copy of the order until 22 April 2010.

A psychological report performed on C.M. found she experienced anxiety and emotional trouble, and recommended separation from her father. Both T.M. and C.M. were admitted to a family violence victim's shelter on 22 April 2010.

M.M. was not evicted from the home despite two visits from the police on 22 April 2010 and 28 April 2010. A third attempt to evict also failed when M.M. showed a decision by the Buiucani District Court suspending the enforcement of the protection order. The police refused to take any action until the courts made a decision.

T.M. and C.M. appealed the decision along with the Public Order and Police Department of the Ministry of Internal Affairs ("the Department"). The Department argued the court was obligated by law to take a decision within 24 hours, which it had failed to do. Also, law provides that objections to a protection order could not suspend enforcement of that order. Failure to take a decision and failure to enforce the protection order left T.M. and C.M. at risk of further ill treatment.

On 24 May 2010 the Chisinau Court of Appeal rejected the appeal by T.M. and accepted M.M.'s, implicitly annulling the protection order. The court said the lower court failed to examine a request in a special procedure and had not specified the reasons for adopting the protection order. Also, they said the court had failed to verify whether the aggressor had been properly summoned and failed to obtain a report from social assistance authorities and police before adopting the protection order. Since the lower court did not have the authority to suspend the enforcement of the protection order the decision of 29 April 2010 was quashed. The Court of Appeal ordered re-examination of the case.

On 15 July 2011 the Buiucani District Court rejected the request of T.M. and C.M. for a protection order. It concluded domestic violence had not been proved.

**COMPLAINTS:**

- (1) Authorities violated Article 3 of the Convention when they failed to fulfill their positive obligations in offering protection from further violence and failing to prosecute the aggressor.
- (2) The Buiucani District Court violated Article 6 of the Convention when they suspended its own decision of 11 April 2010. Law requires such a right to only a higher instance court.
- (3) Authorities failed under Article 8 of the Convention when they failed to fulfill their positive obligations to take a quick response to the request for a protection order and then failing to communicate that decision immediately to competent authorities. Also, the leniency of the sanctions applied to the aggressor contributed to the continued acts of violence.
- (4) Article 13 of the Convention was violated when the applicants had no effective remedies in respect to their complaint under Article 8, in particular in respect to police officers' inertia in enforcing the protection order.
- (5) Authorities violated Article 14 of the Convention in conjunction with Articles 3 and 8, due to the biased approach against women in matters of family violence.

**QUESTIONS TO THE PARTIES:**

- (1) Has there been a violation of Article 3 and/or 8 of the Convention? In particular, did the authorities discharge their positive obligations under these provisions to protect the applicants from domestic violence and to prosecute those responsible for such violence?
- (2) Has there been a violation of Article 13 of the Convention? In particular, did the applicants have at their disposal effective remedies in respect of their complaints under Article 3 and/or 8 of the Convention, in view inter alia of the apparent impossibility to enforce the protection order while it was in force?
- (3) Has there been a violation of Article 14 of the Convention, taken in conjunction with Article 3 and/or 8 of the Convention on account of an alleged discrimination against women in matters concerning domestic violence?

**Mudric v. Moldova**

No. 74839/10

Status Unknown

**FACTS AND PROCEDURAL HISTORY:**

Ms. Mudric, 72 years old, is a native of Moldova and lives in Lipcani. Ms. Mudric divorced her husband several years ago. She owns her own home, and her ex-husband lives next door. On 31 December 2009 her ex-husband broke into her home and beat her. He again broke in and beat her on 19 February 2010. Since that time he has remained in her home. A medical report confirmed Ms. Mudric was beaten, and on 18 March 2010 she reported the incidents to the police and other authorities. Ms. Mudric says the police were aware of the abuse, but did nothing to protect her. Ms. Mudric's ex-husband beat her again on 27 March 2010. The local police partially confirmed the abuse, but did not sanction Ms. Mudric's ex-husband because of his mental illness.

Ms. Mudric obtained a court ordered eviction and an order for her ex-husband to stay away from her and her house. The order was not enforced and Ms. Mudric's ex-husband beat her again. A new court order was filed, but again not enforced.

After another incident of abuse, Ms. Mudric obtained a third court order. Throughout this period of abuse, Ms. Mudric and her lawyer made numerous complaints to the police, the prosecutor's office, and other authorities. At the time of application, no measures have been taken to ensure Ms. Mudric's ex-husband is treated for his mental illness.

#### COMPLAINTS:

- (1) Authorities violated Article 3 of the Convention when they failed to protect her from the ill treatment in her home and when they failed to enforce binding court orders designed to offer protection.
- (2) Authorities violated Article 14, in conjunction with Articles 3 and 8 of the Convention, when they discriminated against her because of her gender and denied her the opportunity to live a life without violence.
- (3) Authorities violated Article 17 of the Convention when they refused to sanction her ex-husband and allowed him to continue his illegal actions, which led to the destruction of the applicant's rights.

#### QUESTIONS TO THE PARTIES:

- (1) Has there been a violation of Article 3 of the Convention? In particular, did the authorities discharge their positive obligations under that provision to protect the applicant from domestic violence and to prosecute the person responsible for such violence?
- (2) Has there been a violation of Article 8 of the Convention?
- (3) Has there been a violation of Article 14 of the Convention taken in conjunction with Article 3 and/or 8 of the Convention?

#### **Eremia v. Moldova**

No. 3564/11

Status Unknown

#### FACTS AND PROCEDURAL HISTORY:

Ms. Lilia Eremia, Ms. Doina Eremia, and Ms. Mariana Eremia, mother and daughters are Moldovan nationals who live in Valcinet. Ms. Lilia Eremia is married to a police officer, A. Doina Eremia, and Mariana Eremia are their daughters. According to the applicants, A oftentimes came home drunk and assaulted his wife, at times in front of the children. In July 2010 Lilia Eremia filed for divorce. After that A became more violent after, hitting and insulting all three applicants. On 18 September 2010 A was sanctioned by administrative court. On 30 September 2010 he was warned by the Ministry of Internal Affairs to stop his violent behavior.

On 5 November 2010 A came home drunk and beat up Lilia Eremia, and the next day she complained to the prosecutor's office. A again hit Lilia Eremia on 11 November 2010 and on 12 November 2010, on which he almost suffocated her. This resulted in Lilia Eremia losing her voice for a day and a half.

On 29 November 2010 Lilia Eremia asked for the court to issue a restraining order. A was ordered to leave their house for 90 days and was prohibited from coming within 500m of the applicants and from

contact. The order was brought to the attention of police, the prosecutor's office and social welfare authority. The police opened a case for supervision of the enforcement of the restraining order and on 14 December 2010 local police warned A to stop his violent behavior. A left the family home and was housed in temporary housing.

On 16 December 2010 A saw Lilia Eremia on the street and began to follow her. He insulted her and tried to stop her until she found refuge in a store. On 19 December 2010 A entered the family home, violating the restraining order and hit Lilia Eremia. She complained to the police and informed the prosecutor's office.

On 10 January 2011 Lilia Eremia gave statements to the local police. She said she had been persuaded to withdraw her complaint, due to the negative effects of the criminal record of her husband on her daughters' education and career prospects. At the next meeting Lilia Eremia expressed her desire to file for divorce.

On 13 January 2011 A violated the restraining order by entering the home and again hit and insulted Lilia Eremia. He simulated strangling her and warned he would kill her aunt if she continued complaining to authorities. On 14 January 2011 a medical exam found injuries on her neck. The applicants have been in hiding since the incident and a criminal investigation was initiated against A.

**COMPLAINTS:**

- (1) Authorities violated Article 3 of the Convention when they were inactive in protecting the applicants from family violence and in prosecuting the perpetrator.
- (2) Authorities violated Article 14 of the Convention, in conjunction with 3 and 8, when they failed to apply the domestic legislation, intended to protect the applicants from domestic violence. This result was based on preconceived ideas concerning the role of women in the family.
- (3) Authorities violated Article 17 of the Convention by refusing to apply the domestic violence law to protect the applicants from domestic violence and they were willfully destroying their rights under the Convention.

**QUESTIONS TO THE PARTIES:**

- (1) Has there been a violation of Article 3 of the Convention? In particular, did the authorities discharge their positive obligations under the provision to protect the applicants from domestic violence and to prosecute those responsible for such violence?
- (2) Has there been a violation of Article 8 of the Convention?
- (3) Has there been a violation of Article 14 of the Convention, taken in conjunction with Article 3 of the Convention?

**Munteanu v. Moldova**

No. 34268/11

Communicated Case

**FACTS AND PROCEDURAL HISTORY:**

Ms. Rodica Munteanu and Mr. Cristian Munteanu are Moldovan nationals who live in Durllesti. They are mother and son. Rodica Munteanu is married to I.M. Three years ago I.M. lost his job and began to drink heavily. He became violent towards both applicants. He also sold items in their home to pay for alcohol.

In 2007 I.M. severely beat Rodica Munteanu, resulting in a three-week hospitalization. Both verbal and physical violence continued after. I.M. also beat and insulted his son regularly.

On 18 April 2011 Rodica Munteanu asked police to take action against I.M. The police fined Rodica Munteanu because I.M. had called police earlier to report her beating and insulting him. Rodica Munteanu had not been in the village when the assaults allegedly occurred.

Rodina Munteanu called police after I.M. beat her again on 19 April 2011. On 21 April 2011 she asked for a protection order. On 3 May 2011 the Buiucani District Court issued the order, ordering I.M. to leave the house for 90 days and not approach the applicants. The order was forwarded to the police the same day. Police informed I.M. of the order and he left the house.

The next day, I.M. returned home. Rodina Munteanu repeatedly called police, but they did nothing to remove I.M. from the home. On 19 May 2011 Rodina Munteanu's lawyer asked the prosecutor to start an investigation for acts of domestic violence and to ensure the protection order was enforced. The lawyer also asked that I.M. be examined to determine if he had alcohol dependency.

On 24 May 2011, I.M. insulted and pushed Rodina Munteanu and she called police. The police officer told her he was tired of their family problems and refused to assist. On 25 May 2011 two social assistants from the Buiucani Social Assistance Agency told Rodina Munteanu to be nice to her husband in a manner that would preserve the family.

On 26 May Rodina Munteanu made a complaint against the two social workers for victimizing the victim of domestic violence. Another complaint was made against the Ministry of Internal Affairs concerning the behavior of the officer who refused her assistance. I.M. continues to live in the house with the applicants and continues to act aggressively.

#### COMPLAINTS:

- (1) Authorities violated Article 3 of the Convention when they tolerated the abuse by I.M. and failed to enforce the protection order, which encouraged his feeling of impunity.
- (2) Authorities breached Article 14 of the Convention, in conjunction with Article 3 and 8, when they discriminated against women.
- (3) Authorities failed to take any resolute action against I.M., which allowed the destruction of the applicants Convention rights, contrary to Article 17 of the Convention.

#### QUESTIONS TO THE PARTIES:

- (1) Has there been a violation of Article 3 and/or 8 of the Convention? In particular, did the authorities discharge their positive obligations under these provisions to protect the applicant from domestic violence and to prosecute those responsible for such violence? (see, *mutatis mutandis*, *Opuz v. Turkey*, no. 33401/02, §§ 158-176, ECHR 2009)?
- (2) Has there been a violation of Article 13 of the Convention? In particular, did the applicants have at their disposal effective remedies in respect to their complaints under Article 3 and/or 8 of the Convention, in view *inter alia* of the apparent impossibility to enforce the protection order issued in their respect?
- (3) Do the circumstances of the case disclose discriminatory treatment against the first applicant on account of her gender, contrary to Article 14 of the Convention taken in conjunction with Article 3 and/or 8 of the Convention?





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