

**SHADOW REPORT ON THE IMPLEMENTATION OF THE COVENANT ON ECONOMIC  
SOCIAL AND CULTURAL RIGHTS IN THE REPUBLIC OF MOLDOVA**

**46th Session (02 - 20 May 2011)**

**INTRODUCTION**

The present report will focus on human rights violations in the field of discrimination of people living with HIV/AIDS in the Republic of Moldova. The document provides also suggestions and recommendations to be included in the Concluding Observations of the Committee on Economic, Social and Cultural Rights related to the rights of people living with HIV/AIDS.

IDOM is an independent, non-profit organization founded in 2007 by a group of lawyers and defenders of human rights. The major aim of IDOM is to contribute to education, promotion and defence of the rights and liberties guaranteed by national and international legislation. IDOM carries out activities in the following main areas: the rights of people living with HIV/AIDS, the rights of people with mental disabilities, patient's rights, reproductive rights, right not to be subjected to torture or other cruel, inhuman or degrading treatment.<sup>1</sup>

The report is structured as following: (I) Information of State presented to the Committee on Economic Social and Cultural Rights for the substantive session 2011; (II) Questions addressed by the Committee for Economic, Social and Cultural Rights in the list of issues to State and its reply to it; (III) Comments of the Moldovan Institute for Human Rights on the replies provided by the State, including relevant information on the social rights; and (IV) List of suggestions and recommendations to be included in the Concluding Observations of the Committee on Economic, Social and Cultural Rights related to the social rights of people living with HIV/AIDS.

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<sup>1</sup> The members of IDOM contribute to writing reports on diverse violations of human rights. The reports result from various sources, as the analysis of the situation and of cases, the comparison of national legislation with international acts in the domain of human rights and from recommendations for improvement, such as: Alternative Reports to the UN Committees: UN Committee for Civil and Political Rights, available at [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/CreDO\\_IDOM\\_Moldova97.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/CreDO_IDOM_Moldova97.pdf) (27.02.2011), List of issues presented in 2010 to the UN Committee for Social, Economic and Cultural Rights, available at <http://www2.ohchr.org/english/bodies/cescr/cescrwg44.htm> (27.02.2011); UN Committee against Torture, available at [http://www2.ohchr.org/english/bodies/cat/docs/ngos/CRDO\\_IDOM\\_CNR\\_Moldova43.pdf](http://www2.ohchr.org/english/bodies/cat/docs/ngos/CRDO_IDOM_CNR_Moldova43.pdf) (27.02.2011).

## **I. STATE REPORT OF THE REPUBLIC OF MOLDOVA PRESENTED TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (Substantive session of 2011)**

66. The law No. 275 of 10.11.1994 on the status of foreign citizens and stateless persons provides that:

- (a) Foreign citizens and stateless persons have the same rights, freedoms and obligations with the citizens of the Republic of Moldova, with the exceptions set by law;
- (b) Foreign citizens and stateless persons are equal before the law and in their relations with public authorities, without any difference based on race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social origin.

67. According to chapter II of the above-mentioned law, foreign citizens or stateless persons are guaranteed with the following rights and freedoms:

(a) Right to choose the residence (art. 6):

- (i) Foreign citizens and stateless persons have the right to reside in the Republic of Moldova on the basis of valid identity acts;
- (ii) Foreign citizens and stateless persons temporarily coming to the Republic of Moldova have the right to reside in the country in accordance with the conditions set in the legislation in force.

(b) Right to employment and to its protection (art. 7):

- (i) Foreign citizens and stateless persons residing in the Republic of Moldova have the right to employment and to its protection, in accordance with the legislation in force;
- (ii) Foreign citizens and stateless persons may not be appointed in positions or involved in activities for which, in accordance with the legislation in force, the citizenship of the Republic of Moldova is mandatory.

(c) Right to rest and to health protection (art. 8):

- (i) Foreign citizens and stateless persons have the right to rest and to health protection on a general basis same as the citizens of the Republic of Moldova;
- (ii) Foreign citizens and stateless persons which reside temporarily in the Republic of Moldova are obliged to obtain medical insurance, in accordance with the procedures adopted by the Government for the entire period of stay in the Republic of Moldova;
- (iii) Foreign citizens and stateless persons are obliged to pass the medical examination with the purpose of identification of the Human Immunodeficiency Virus (HIV) and the AIDS disease.

767. The Ministry of Health along with the public administration authorities implement a list of national programmes, including those with special emphasis on the support of patients with chronic diseases, both non-infectious and infectious, ensuring healthcare assistance mainly for the underprivileged categories of the population. Among the healthcare programmes implemented in the reporting period are the following main ones:

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(e) The National prophylaxis and fight of the HIV/AIDS and STD Programme for years 2001–2005, adopted by means of Government Decision No. 482 of 18 June 2001;

(f) National prophylaxis and control of the HIV/AIDS and STD Programme for years 2006–2010, adopted by means of Government Decision No. 1218 of 23.10.2006.

## II. LIST OF ISSUES (E/C.12/MDA/2)

### Article 2, paragraph 2

**5. Please provide information on measures taken to ensure effective protection against discrimination faced by persons living with HIV/AIDS, especially in the fields of education, employment, housing and health care.**

#### *State Reply to the issues raised in paragraph 5 of the list of issues*

1. The guarantee of protection and exclusion of discrimination and stigmatization of the people infected with HIV/AIDS is stipulated in the legislative and normative acts (the Law of the Republic of Moldova on the Prophylaxis of HIV/AIDS Infection No. 23 of 16 February 2007, the Law on the Patient's Rights and Obligations No. 263 of 27 October 2005; the National Programme on Prevention and Control of HIV/AIDS and Sexually Transmitted Diseases (STDs) for 2006-2010, and other documents).
2. In accordance with the Law on the Prophylaxis of HIV/AIDS Infection (Article 25) No. 23 of 16 February 2007, discrimination is prohibited in the public medico-sanitary and balneal institutions and in the private departments. In accordance with the Article 26 of the above mentioned Law, discrimination regarding the access to insurance, credit and lending services is prohibited, and Article 27 provides liability for violating the rights of HIV positive people.
3. During the years 2009-2010, in collaboration with the United Nations Children's Fund (UNICEF), the Project on the Reduction in HIV-related Stigma and Discrimination and Increased Confidentiality in Health Sector by Evaluating the Knowledge and Attitude of the Medical Personnel towards People Infected with and Affected by HIV/AIDS was conducted. There were organized and unfolded workshops with the managers and deputy managers of the Public Medico-Sanitary Institutions (PMSIs), district hospitals, Family Medical Centres (FMCS) and Preventive Medicine Centers (FMCs), and in four administrative areas (Causeni, Falesti, Balti, the Territorial Medical Association Buiucani in Chisinau) – with all the members of the medical personnel.
4. The Project on the Reduction in HIV-related Stigma and Discrimination and Increased Confidentiality in Health Sector by Evaluating the Knowledge and Attitude of the Medical Personnel towards the People Infected with and Affected by HIV/AIDS was conducted in Chisinau and Balti municipalities, and in Causeni and Falesti districts.
5. During conducting the National Programme on Prevention and Control of HIV/AIDS and STDs for the years 2006-2010, seven care projects in the community for the people infected with HIV/AIDS focused on providing support services, primary healthcare, access to ant-retroviral therapy, distribution of food packages, discrimination reduction and promotion of a healthy lifestyle, have been implemented. These projects are limited and require development with the help of increased state support. At present, in connection with the establishment of a palliative care ward for AIDS patients, the regulatory framework that will allow the development and operation of this new service in the Republic of Moldova is being elaborated.
6. In order to ensure the access to voluntary counselling and testing services to 100% of the population at request, including to pregnant women and persons aged between 15-24 years, the network of Cabinets of Voluntary Counselling and Testing for HIV and Hepatitis B and C Markers was established and operates; the regulation, methodological materials, forms of evidence and evaluation were approved, the medical staffs were trained. 56 cabinets operate, including five cabinets in the eastern territories of the country, and three cabinets in prisons. In 2009, 98071 consultations were given.

7. The legislative and normative acts were strengthened and adjusted to the requirements of the World Health Organization (WHO), the European Union (EU), that proves the political commitment of the country, which joined the UN Special Session Declaration 2001 on the Prohibition of Discrimination of the People Affected by and Infected with HIV or Vulnerable to Infection of July 21, 2001, based on the principle of observation of human rights and human dignity, and provides the normative basis for the implementation of comprehensive, multidisciplinary and inter-sectoral interventions necessary to minimize the consequences of HIV epidemic.

8. The following acts were elaborated and implemented: the Law on the Prophylaxis of HIV/AIDS Infection” (2007), the Standards on the “Epidemiological Surveillance of HIV/AIDS” (2007), „Palliative Care of Patients Infected with HIV/AIDS” (2008), the Rules of Medical Examination and Surveillance (2007), the Concept and Legislative Framework of the Voluntary Counselling and Testing (2006), the Guidelines on the Hospital Prophylaxis of HIV (2006), on the Prevention of HIV Infection in Case of Occupational Exposure (2006), on the Use of Rapid Tests (2006), on the Optimization of the Collection and Transportation of Blood Samples for HIV Testing and of the Results’ Release (2009), the Surveillance and Control Guidelines in the Nosocomial Infections (2008, 2009), the Reduction in HIV-related Stigma and Discrimination (2009), the Treatment and Care in Case of HIV and AIDS Infections (2005, 2009), in the Prophylaxis of the Maternal-fetal Transmission of HIV (2007, 2009).

9. In order to offer ***effective protection against discrimination***, the Ministry of Justice elaborated the Draft Law on Preventing and Combating Discrimination, which is at the stage of coordination with the interested authorities, and will be finalized and submitted to the Government for examination. The aim of the Law is to prevent and combat discrimination based on the criteria of race, nationality, ethnic origin, language, religion, colour, sex, age, health status, disability, sexual orientation, political opinion, social status, membership to a category of disadvantaged persons, as well as based on any other criteria. Also, the aim of this Law is to define the concept of *discrimination (direct and indirect discrimination)* and other concepts, such as *harassment, incitement to discrimination, victimization, affirmative actions*, etc., that are not defined in the current legislation.

10. The draft regulates the prevention and combating of discrimination in different activity sectors. Thus, it prohibits any distinction, exclusion or preference, which has the effect of limiting employment. The proposed rules complement and clarify the already existing rules in the Labour Code. The following actions of the employer are to be considered discriminatory: placement of employment ads indicating conditions favouring certain individuals, unjustified refusal of employment, unequal remuneration for the same type of work, victimization, harassment based on any criteria, etc. In order to ensure the observance of the non-discrimination principle in the workplace, the employer will post the main rules necessary to ensure this principle in places accessible to the public.

11. The prohibition of discrimination in the most important fields, including the right to work, education, health, goods and services available to public is stated in the Recommendation No. 7 of the European Commission against Racism and Intolerance on Combating Racism and Racial Discrimination of December 13, 2002.

12. Considering the promotion of policy in the field of preventing and combating discrimination, the establishment of a governmental commission is proposed through this draft.

13. In order to ensure the observance of the principle of non-discrimination, the guilty person will be subject to criminal, administrative, civil and disciplinary prosecution. The person considered to be a victim of discrimination has the right to file an action into court and request: the determination of the violation of his/her rights, the prohibition of further infringement, the repair of the caused material and moral damage, the invalidity of the act which led to discrimination. Also, the Draft in Article 24 sets the burden of appropriate proof, according to which, the person who files an action into court must prove the *facts alleged to have caused discrimination, material and moral damages*, while the *burden of proving that the facts do not constitute discrimination belongs to the defendant*.

14. In order to continue the task of observing and promoting the human rights by the Ministry of Justice, the Parliament Draft Decision was elaborated to approve the National Action Plan on Human Rights for 2010-2012, approved by the Government *Decision* No. 881 of September 23, 2010, which reserves a separate chapter to the problem of *preventing and combating discrimination and ensuring the rights of national minorities* (Cap. 11).

### **III. COMMENTS OF THE MOLDOVAN INSTITUTE FOR HUMAN RIGHTS ON THE MEASURES TAKEN BY THE STATE TO ENSURE EFFECTIVE PROTECTION AGAINST DISCRIMINATION FACED BY PERSONS LIVING WITH HIV/AIDS, ESPECIALLY IN THE FIELDS OF EDUCATION, EMPLOYMENT, HOUSING AND HEALTH CARE**

Since January 2010, IDOM has been running the project “Reducing HIV-related burden in the Republic of Moldova” under the Global Fund Round 8 Grant, which is focused on monitoring, protection and promotion of the rights of people living with HIV/AIDS from the perspective of eliminating discrimination and stigmatization. The lawyers of the Litigation Program, through legal routine consultancies and strategic litigation,<sup>2</sup> identified the violations referring to the rights of people living with HIV in the Republic of Moldova.

The respect and protection of the intimate, family and private life is guaranteed by the Constitution of the Republic of Moldova.<sup>3</sup> The Moldovan Law on prophylaxis of HIV/AIDS infection<sup>4</sup> and the Law on patients’ rights and responsibilities<sup>5</sup> guarantee the confidentiality and respect for the intimate and private life. The Law on protection of personal data<sup>6</sup> ensures the obligations of the holders of personal data to protect their confidentiality.

#### **The main human rights violations faced by the people living with HIV/AIDS in the Republic of Moldova are related to<sup>7</sup>:**

- illegal disclosure by doctors to third parties of the data regarding the patients’ HIV status<sup>8</sup>;

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<sup>2</sup>During 2010 the lawyers consulted 142 persons living with HIV/AIDS and undertook 29 strategic cases, litigated extra-judiciary or within national judicial courts.

<sup>3</sup> Constitution of the Republic of Moldova, Article 28, which stipulates that “the State shall respect and protect the intimate, family and private life.”, [http://www.constcourt.md/index\\_en.html](http://www.constcourt.md/index_en.html) (10.01.2011).

<sup>4</sup> Law of the Republic of Moldova on prophylaxis of HIV/AIDS infection, No. 23-XVI, 16 February 2007.

<sup>5</sup> Law of the Republic of Moldova on patients’ rights and responsibilities, No. 263, 27 October 2005.

<sup>6</sup> Law of the Republic of Moldova on protection of personal data, No. 17-XVI, 15 February 2007.

<sup>7</sup> Findings of the Litigation Program of the Moldovan Institute for Human Rights, based on consultations provided to 142 persons living with HIV/AIDS and 29 litigated strategic cases during 2010; Report of the Litigation Program (January-March 2010), p.5-9, IDOM, <http://aids.md/aids/files/223/idom-report-programme-litigation-january-march-2010-en.pdf>.

<sup>8</sup> For instance: Case *T.P. 0132*: the doctor disclosed the *T.P. 0132*’s HIV status to other patients and to the staff of the hospital’s section. The *T.P. 0132* was in the hospital, while he was under medical treatment due to a car accident, and was placed in a separate room due to his HIV status.

Other cases referred to the disclosure of medical confidential information related to HIV status occurred in different regions of Moldova and were suspected of being committed by the family doctors to the third parties: In the cases *C.S. 0078* and *C.A. 0190* the family doctors divulged this information in the village and the villagers started to ignore these persons, the latter’s being asked direct questions related to their HIV status. In the case *C.A. 0190*, even the pupils were informed at school that in the family of *C.S. 0190* a person lives with HIV. *C.A. 0190* was asked by her mother to use personal cutlery and to cook personal food.

Articles and journalistic investigations which were on this subject: 1) journalistic investigation „*Mi-e frică să ies din casă. Am HIV*” (*I am afraid to leave the house. I am HIV*”), published by the Center for Journalistic Investigation (<http://www.investigatii.md/index.php?art=457>); 2) article of Free Europe dated 20 August 2010 “*HIV/SIDA și confidențialitatea datelor în R. Moldova*” (“*HIV/AIDS and confidentiality of data in Moldova*”) (<http://www.europalibera.org/content/article/2143615.html>); 3) article of the newspaper Timpul dated 20 August 2010 „*Este adevărat că ai HIV?!*” (“*Is it true that you are HIV?!*”) <http://www.timpul.md/articol/este-adevarat-ca-ai-hiv-14490.html>

- coding or otherwise distinguishing with special signs the medical cards and/or medical referral forms of HIV-positive patients by medical personnel;
- marking with similar distinguishing signs the medical cards of the children whose parents are HIV positive by doctors<sup>9</sup>;
- mandatory inclusion of the code of diseases in the official sick leave forms issued by doctors – to be presented to employer for official records;
- absolute medical contraindication for persons, including also foreigners, with HIV/AIDS to adopt children<sup>10</sup> and also children with HIV/AIDS status are impede to be adopted;<sup>11</sup>
- stigma and discrimination related to children with HIV status accessing boarding schools<sup>12</sup>, kindergartens<sup>13</sup> and schools;
- refusals by the Bureau of Migration and Asylum within the Ministry of Interior to issue immigration certificates to HIV/AIDS positive foreign citizens<sup>14</sup> already married to Moldovan citizens<sup>15</sup>;
- refusal by the Social Assistance Office to place a person living with HIV in the residential state social institutions due to the HIV status;<sup>16</sup>

## **VIOLATION OF THE RIGHT TO PRIVACY**

Breaches of confidentiality about individuals' HIV status are common due to medical institutions' actions and medical staffs' negligence, and they are rarely punished. The territorial medical institutions at the place of residence where people undertake different medical examinations, procedures, are marking readably code "202", "B20", "HIV", "note: danger of eminent disease", geometrical figures or other signs on the medical records, medical referral letters and other medical documents of all patients with HIV<sup>17</sup>. These

<sup>9</sup> In the case *D.I. 0012*, the beneficiary communicated that he and his wife were diagnosed with HIV-positive. The family has a child, who was born in 2005. The child's parents wished to move in another village for living, therefore they requested and received from the family doctor the original personal medical record/card of the child, in which the doctor indicated, without any prior notice and consent, the information related to the HIV status of the parents. In the medical file was stipulated that the child is HIV positive, although the test of the child was negative. On the cover page of the child's medical file was indicated "*Status of major disease*".

In the case *M.O. 0123*, the family doctor also included in the personal medical record of the child the information related to the HIV status of the parents, without any prior notice and consent.

<sup>10</sup> Decision of the Moldovan Government regarding the approval of the list of medical contraindications for persons who intend to adopt children, No. 512 of 25 April 2003.

<sup>11</sup> Joint Ordinance of the Moldovan Ministry of Education (no. 113 of 11 April 1994), Ministry of Health (no. 64 of 5 April 1994) and Ministry of Justice (no. 47 of 11 April 1994).

<sup>12</sup> Case of ID 0157 registered on 12 November 2011: the boy was refused to be placed in a boarding school because of HIV status. The director of the school stated that it refuses to accept the kid in the institution until there would be a letter of acceptance issued by the Ministry of Education regarding the placement of the boy with HIV in the boarding school.

<sup>13</sup> Case of MV 0045 registered on 26 April 2010: the HIV status of baby girl of 5 years old was divulged by the social worker to the kindergarten. The attitude of the educator, director and kindergarten's staff changed in a negative way towards the baby and the parents decide to withdraw the kid from the institution. The natives from the villages also found out about the HIV status of the baby. Parents left with the baby the village and moved to Russian Federation.

<sup>14</sup> Article 24 of the Law of the Republic of Moldova on prophylaxis of HIV/AIDS infection, No. 23-XVI, 16 February 2007.

<sup>15</sup> The status of immigrant could be obtained by the foreigners that stay permanently in the Republic of Moldova. One of the conditions for obtaining the status of immigrant in the Republic of Moldova is to present mandatory, among other documents, the medical certificate regarding the health status and the results of the HIV/AIDS test. In the existing 5 litigated cases, the Bureau of Asylum and Migration of the Ministry of the Interior Affairs refused to issue the certificates of immigrants, referring to the fact that the foreigners are infected with HIV and according to the Article 24 para 1 of the Law on HIV/AIDS infection prevention (no.23-XVI of 16 February 2007 is prohibited the immigration to foreign people that suffer of diseases that present danger to public health, although all of them are married to Moldovans, have properties and some of them have children.

<sup>16</sup> Case of *RE 0133*: The Social Assistance Office Singerei refused to place a person living with HIV and with severe disability (without legs and arms) in the residential state social institution due to his HIV status;

TV program "*Access prohibited*" at Jurnal TV of 09 October 2010, <http://www.jurnaltv.md/#aces-interzis-9-octombrie-2010-166892>

<sup>17</sup> Case VN 0003 registered on 05 January 2010; Case MD 0004 registered on 05 January 2010; Case AV registered on 23 February 2010; Case DI 0025 registered on 03 March 2010; case BE 0026 registered on 03 March 2010; case UN 001 registered

patients are facing negative, ignorant and distant attitude from the doctors of the medical institutions. This practice of marking is introduced by the medical institutions to inform unofficially other doctors and medical staff within the institution about the patients' HIV status and special medical measures necessary to be undertaken in order to avoid new cases of infection either among doctors or other patients. This practice of marking is still stipulated by some ministerial orders issued by the Ministry of Health<sup>18</sup>.

Illegal disclosure of confidential medical information occurs as well in the official form of the sick leave certificate. The form of the certificate is a statistical, financial, social and judicial document and it is archived in the accounting department of the institutions for a period of 10 years. The form of the certificate must be completed by the physician at the beginning of the sick leave. The procedure regarding its filling out is established in the Instruction of the Ministry of Health and Social Protection No.189 of 22 June 2005, modified by Order no. 281 of 28 April 2010 of the Ministry of Health. Accordingly to the modified legal provisions, the doctor should indicate "*the code of disease*" provided by the International Classifier of Diseases (*edition X*) of the World Health Organization<sup>19</sup>, which could be easily found by accessing the internet. The code of disease is indicated for stipulating the temporary disability during the employee's absence from work and the employer calculates and pays the temporary disability indemnity. The certificate is presented at the job place at the end of the sick leave and many of the staff members, including accountant, manager, trade union committee, employee's supervisor and the human resource department, have access to the employee's confidential medical information as they must sign the certificate when the person is back to work and presents it to them.

Sharing the personal information regarding patients who are injecting drug users between the medical and state institutions constitutes unjustified interference in the private life. The Republic of Moldova has an automatic and mandatory transmission system<sup>20</sup> used by narcological institutions to send to internal affairs bodies the information on patients registered at the narcologists. Police officers monitor the private life of people registered at the narcologists, supervise their behavior, and sometimes use abusive detention and permanent searches of their homes. The persons have to report to the Police Station once per month by giving written explanation.<sup>21</sup> Police officers have a strict evidence of medical records for each person.

## **VIOLATION OF THE RIGHT TO FAMILY**

The Decision of the Government of the Republic of Moldova regarding the approval of the List of medical contraindications for persons who intend to adopt children<sup>22</sup> and the Joint Ordinance of the Moldovan Ministry of Health, Ministry of Justice and Ministry of Education of April 1994<sup>23</sup> prohibit the adoption of

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on 19 may 2010; Case MO 123 registered on 15 September 2010; Case UP 0159 registered on 01 December 2011; Case ML 0185 registered on 01 February 2011; Case GC 0195 registered on 09 March 2011;

<sup>18</sup> Although, the Order no. 11 of 29 December 1997 of the Moldovan Ministry of Health, Appendix 3 "Instruction regarding the organizational measure of the work and medical care of persons infected with HIV/AIDS" was abrogated on 17 January 2011, the medical care institutions mark the medical cards and records according to the Rules adopted by the Ministry of Health, no. 314 of 31 July 2007 called "*Rules regarding medical examination and supervision in cases of identifying contamination with HIV/AIDS*", which stipulates in Annex no. 2 a list and codes with regard to the persons who are HIV tested. Some of the medical institution established as a practice such marking procedure of the medical records of the persons with HIV status.

<sup>19</sup> International Classification of Diseases <http://www.who.int/classifications/icd/en/>

<sup>20</sup> Point 8-16 from the *Regulation on the collaboration between the health protection agencies and the internal affairs bodies in order to prevent the antisocial actions of patients suffering from chronic alcoholism or drug addiction, approved by the joint Order of the Ministry of Health and Social Protection and the Ministry of Internal Affairs No. 350/433 of 06/18.10.2006 on preventive measures against the antisocial actions of patients suffering from chronic alcoholism and drug addiction.*

<sup>21</sup> *Case TI 0195, AV 0196 and LE 0197 of 17 March 2011*-- Recent interviews with beneficiaries of IDOM Project "Reducing HIV-related burden in the Republic of Moldova" within legal consultancies.

<sup>22</sup> Decision of the Moldovan Government regarding the approval of the list of medical contraindications for persons who intend to adopt children, No. 512 of 25 April 2003.

<sup>23</sup> Joint Ordinance of the Moldovan Ministry of Education (no. 113 of 11 April 1994), Ministry of Health (no. 64 of 5 April 1994) and Ministry of Justice (no. 47 of 11 April 1994).

children with HIV/AIDS and also people with HIV/AIDS status are prohibited to adopt children, thereby depriving them of a family environment. This fact was also mentioned in the Concluding Observations of the UN Human Rights Committee regarding the Republic of Moldova<sup>24</sup>.

### **DISCRIMINATION AND BARRIERS TO ACCESS RESIDENTIAL STATE SOCIAL INSTITUTIONS WITH REGARD TO PERSONS IN NEED OF SPECIAL SOCIAL CARE**

People living with HIV/AIDS and who are in great need of state social protection are refused to be placed in the state residential social institutions due to their HIV status<sup>25</sup>. Even if the above-mentioned Law on prophylaxis of HIV/AIDS infection prohibits discrimination in medical institutions, *point d) (1)* from the Instruction regarding the accommodation into social institutions under the jurisdiction of the Ministry of Labor and Social Protection, adopted on 16 February 2000 between the Ministry of Health and the Ministry of Labor and Social Protection, stipulates that HIV is an impediment in accessing the state residential social institutions.

### **DISCRIMINATION AND BARRIERS TO EMPLOYMENT**

The Moldovan Law on prophylaxis of HIV/AIDS infection prohibits the mandatory medical HIV testing for being employed in certain professions, except the cases provided by law. The list of jobs for which a medical testing is needed follows to be approved by the Government. Till now there is no law which would provide the exceptional cases. The Order No. 255 of 15 November 1996 adopted by the Ministry of Health regarding the organization of the mandatory medical examination of employees from food services, medical institutions, communal and children institutions includes mandatory medical testing for a wide variety of jobs, where the risk of HIV transmission is minimal. According to this Order, the staff of the Moldovan AIDS Center (*Centrul SIDA*) and some medical personnel who work directly with persons with HIV status must obligatory pass the HIV testing while being employed and also twice per year. Although, the employers<sup>26</sup> and doctors may order also ad hoc HIV testing for different jobs, which is not mandatory for the professions specified in the above-mentioned Order.

### **UNEFFECTIVE REMEDIES FOR VIOLATION OF THE RIGHT TO PERSONAL DATA OF THE PERSONS LIVING WITH HIV/AIDS**

The protection of personal data, in particular medical data, is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life. The right to confidentiality, right to protection of the personal data of the person seeking HIV testing or is diagnosed with HIV is warranted by the Law on prophylaxis of HIV/AIDS infection<sup>27</sup> No. 23-XVI of 16 February 2007 and the Contravention Code of the Republic of Moldova<sup>28</sup>. Thus, the medical personnel and other persons who, under the service obligations, have information about the results of medical tests for HIV infection (AIDS) are required to keep such information confidential. Disclosure of such information shall be punished administratively in accordance with the law.

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<sup>24</sup> United Nations Human Rights Committee "Concluding Observations on the Human Rights Committee" on the Republic of Moldova, CCPR/C/MDA/CO/2, 29 October 2009, point 12, evidence available at <http://www2.ohchr.org/english/bodies/hrc/hrcs97.htm>

<sup>25</sup> Case of *RE 0133*: The Social Assistance Office Singerei refused to place a person living with HIV and with severe disability (without legs and arms) in the residential state social institution due to his HIV status; TV program "*Access prohibited*" at Journal TV of 09 October 2010, <http://www.jurnaltv.md/#acces-interzis-9-octombrie-2010-166892>

<sup>26</sup> Case AT 0182 registered on 21 January 2011: the person was requested by the patron of a beauty salon to undertake HIV test; case SA 0170 registered on 29 July 2010: Because of the person's HIV positive test, the doctor refused to issue to this person a certificate for the confectionery firm where the person was working.

<sup>27</sup> Article 14 of the Law on prophylaxis of HIV/AIDS infection with regard to "Confidentiality"

<sup>28</sup> Contravention Code of the Republic of Moldova

<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=330333&lang=1>

According to the Contravention Code of the Republic of Moldova, Chapter VII “Offences threatening health of the population, medical data of the person and sanitary-epidemiological situation”, Article 75 provides the administrative sanction for the disclosure of confidential information related to medical testing of immunodeficiency virus contamination (HIV) that causes AIDS.<sup>29</sup> The internal affairs bodies<sup>30</sup> (police commissariats) at the place where the offences were committed are invested with the duties to determine the offences and fill out the minutes related to the circumstances of the offence(s). The file of the case shall be submitted to the administrative committees which are established and function in the town halls of districts of the republic. The administrative commissions, under the law, have the jurisdiction to examine the offence file submitted by the police commissariats related to the disclosure of the confidential medical testing of HIV/AIDS and to impose a fine<sup>31</sup>.

In practice, the law is applied with deficiency, the victims of illegal and unjustified disclosure of HIV/AIDS are reluctant to defend their rights due to some reasons: the police officers like knowledge, techniques examining cases of disclosure of confidential medical information related to HIV/AIDS status; police officers lack trainings on HIV and human rights issues, discrimination issues, right to private life, including right to protection of the personal data; police officers stigmatize persons with HIV/AIDS; the victims of disclosure of their HIV/AIDS status by the doctors or other persons who, by virtue of official duties, have such information are reluctant to submit the complains to the police commissariats because usually the disclosure is committed by the doctors of the medical institution at the place of patients’ residencies; the Contravention Code does not provide effective remedies in case of refusal of the police commissariats to open an administrative case on disclosure<sup>32</sup>. Persons living with HIV/AIDS status are confronting the situation that police officers and other persons from the administrative commissions are natives with them and are not willing to disclose their problems related to disclosure of their HIV/AIDS status because of high rate of stigmatization of such category of persons<sup>33</sup>. Almost all of the persons living with HIV/AIDS that were consulted within the NGO’s project<sup>34</sup> refused to undertake a civil claim on compensation of the non pecuniary damages caused by the doctors’ disclosure of the confidential information related to HIV status, stating that they are afraid of negative attitude of the doctors in further access to medical assistances.

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<sup>29</sup> Article 75 of the Contravention Code “Disclosure of confidential information about medical testing to detect contamination with human immunodeficiency virus (HIV) that causes AIDS by medical personnel or other persons who, by virtue of official duties, have such information is imposed with a fine of 50 to 70 conventional units. (50 units is equivalent to 60 Euros and 70 units is equivalent to 84 Euro).

<sup>30</sup> Article 400 para 4, 5 of the Contravention Code.

<sup>31</sup> Article 398 of the Contravention Code.

<sup>32</sup> In the case of PV 0057, the Police Commissariat from Buiucani district of Chisinau city examined superficially the complaint regarding the disclosure of HIV status by a doctor of the Hospital of Infections Diseases „Toma Ciorba”. The refusal of opening an administrative case on offence was appealed to the Prosecutor Office of Buiucani district which examined the appeal and refused its further examination, based on the Law on petition (*Letter, no. 27-608pet/10-8772 of 25.10.10; no. 03-442pet/10-8037 of 16.09.2010*). In September 2010, the prosecutor sent the lawyer’s complain related to deficiencies of the police commissariat’s examination of the case. The Buiucani Administrative Commission remitted the complaint back to the prosecutor, stating that the commission’s competence is to impose a sanction, but not to examine an appeal towards the refusal of opening an administrative file on offence of the police commissariats. (*Letter 22/175 of 04 October 2010*).

<sup>33</sup> Case CC 0176, registered on 19 January 2011; Case HM 0032 registered on 18 March 2010; case BS 0033 registered on 24.03.2010; case BC 0038 registered on 14 April 2010; case PV 0057 registered on 12 May 2010; case UN 0061 registered on 19 May 2010; cases GL 0064 and GC 0065 registered on 21 May 2010; case CS 0078 registered on 08 June 2010; case CS 0109 registered on 06 August 2010; case BE 0113 registered on 10 August 2010. On the cases which were submitted complains to the police commissariats it was not considered to be the breach of Article 75 of the Code of Administrative Offences due to the period of limitation of the administrative liability – 3 months from the time of committing the offence, prescribed by Article 30 of the Contravention Code.

<sup>34</sup> Since January 2010, IDOM has been running the project “Reducing HIV-related burden in the Republic of Moldova” under the Global Fund Round 8 Grant, providing legal consultancies and undertaking strategic litigation by defending the rights of people living with HIV/AIDS in cases which could have a positive impact on respecting the rights of people living with HIV, changing the negative practices and policies which generate discrimination, stigmatization and violation of the confidential medical information.

The law on anti-discrimination is not adopted yet by the Parliament, although the process of drafting it started in 2008 and the non-discrimination bill was approved by the Government on 18 February 2011. This sparked a wave of discontent among representatives of civil society, especially among religious organizations. Their members claimed that discrimination law which may be adopted in Parliament would lead to the legalization of marriages between same-sex, and to self-assertion and aggressiveness of the sexual minorities.

On 30 March 2011, the Government accepted at the request of the Ministry of Justice the withdrawal of the law from the parliament for further improvements and consultations with the society<sup>35</sup>.

**6. Please provide details on the submission of foreign citizens and stateless persons to HIV/AIDS testing, as provided for by law, and on measures taken in case of non-compliance or a positive test result.**

*State Reply to the issues raised in paragraph 6 of the list of issues*

26. The Law No. 200 of July 16, 2010 (Article 1), regulates the entry, presence and exit of foreigners in/from the Republic of Moldova, the granting and extension of the right of residence, the repatriation, their documentation, the Law also states *coercive* measures in case of non-observance of the residence regime and specific measures of immigration evidence, in accordance with obligations assumed by the Republic of Moldova under the international treaties it is part to.

27. In accordance with the Law on the Prophylaxis of HIV/AIDS Infection No. 23 of February 16, 2007, all the foreign citizens and stateless persons who reside permanently or temporarily in the Republic of Moldova have the right to free (also anonymous) medical examination for early detection of HIV virus and AIDS.

Chapter IV. Voluntary Counselling and Testing

Article 11. Access to testing

(1) The citizens of the Republic of Moldova, the foreign citizens and stateless persons who reside permanently or temporarily in the Republic of Moldova have the right to free (also anonymous) medical examination for early detection of HIV virus and AIDS.

(2) HIV testing is performed upon request, in accordance with the rules of medical examination and supervision elaborated and approved by the Ministry of Health in compliance with the present Law.

Article 24. Restrictions on Travel and Habitation:

(1) The residence in the Republic of Moldova, for a period longer than 3 months, is allowed only to the persons who present a medical certificate confirming an HIV negative test.

(2) A person who has not undergone HIV testing is required to present himself/herself, within 10 days after his/her arrival in the Republic of Moldova, at the concerned institution for passing the HIV test. Persons who submitted a medical certificate confirming an HIV negative test or who undertook this test in the Republic of Moldova, subsequently, have to undergo this test once a year.

(3) The head of the institution, the economic agent or the private person who invites a foreign citizen must be sure that that person holds a medical certificate of HIV testing, and in case the person does not hold one,

<sup>35</sup><http://unimedia.md/?mod=news&id=31923>

the former has to require him/her on time to go to a medico-sanitary institution in order to get the recommended HIV test.

Upon request, in 2009, 4462 foreign citizens were examined, and in 2010, during eight months – 2931 persons.

### **III. COMMENTS OF THE MOLDOVAN INSTITUTE FOR HUMAN RIGHTS ON HIV/AIDS TESTING OF FOREIGN CITIZENS PROVIDED BY THE LAW, AS WELL AS COMMENTS ON THE MEASURES TAKEN IN CASE OF NON-COMPLIANCE OR A POSITIVE TEST RESULT**

Foreign nationals may stay in the Republic of Moldova for a period not exceeding ninety days and must leave Moldova upon expiry of that period.

The Moldovan Law regarding the status of the foreign citizens<sup>36</sup>, Article 32 defines the list of documents that must be enclosed with an alien's application for a residence permit. Among other documents, an applicant must produce a medical certificate showing that he or she does not suffer from diseases that may endanger public health. A foreign national who applies for a residence permit in Moldova must produce a certificate showing his HIV-negative status; if the status is HIV-positive, the law prohibits the stay permit from being issued<sup>37</sup>.

In the existing four litigated cases<sup>38</sup> related to obtaining residence permits by the foreigners living with HIV in the Republic of Moldova consulted and undertaken by IDOM<sup>39</sup>, the Bureau of Asylum and Migration of the Ministry of the Interior refused to issue the certificates of immigrants to HIV/AIDS positive foreign citizens, although all of them are legally married to Moldovan citizens, some of them have children and property in Moldova. The refusals of the Bureau of Asylum and Migration of the Ministry of Interior are referring to the fact that the foreigners are infected with HIV and according to the Article 24 para 1 of the Law on HIV/AIDS infection prevention (no. 23-XVI of 16 February 2007) the immigration is prohibited to foreign people that are HIV/AIDS test positive.

If the foreigner does not obtain the certificate of immigrant, he/she could be punished for committing an administrative offence<sup>40</sup> and be imposed to pay a fine between 1000 lei (around 60 Euros) and 2000 lei (112 Euros), and/or with a sanction of expulsion from Moldova; lack of residence permit means illegal stay in Moldova (in case of more than 90 days) and the length of prohibiting the entry into the country of Moldova in case of expulsion is 5 years<sup>41</sup>.

Comparative data shows that 124 countries, territories and areas world-wide have no HIV-specific restrictions on entry, stay or residence. The other 52 countries, territories or areas impose some form of restriction on the entry, stay and residence of people living with HIV based on their HIV status. The latter category includes seven member states of the Council of Europe<sup>42</sup>. The Republic of Moldova is among other 2 states, Armenia and Russia, that may deport individuals once their HIV-positive status is discovered.

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<sup>36</sup> Nr. Nr. 200, adopted on 16 July 2010, in force since 24 December 2010

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=336056>

<sup>37</sup> Article 24 of the Law of the Republic of Moldova on prophylaxis of HIV/AIDS infection, No. 23-XVI, 16 February 2007

<sup>38</sup> Case SN 0002 registered on 05 January 2010; Case GI 0007 registered on 23 January 2010; Case NY 011 registered on 12 February 2010; Case CI 0155 registered on 29 October 2010;

<sup>39</sup> Project „Reducing HIV-related burden in the Republic of Moldova” under the Global Fund Round 8 Grant, implemented by IDOM

<sup>40</sup> Article 333 of the Contravention Code of the Republic of Moldova

<sup>41</sup> Article 10 of the Moldova Law regarding the status of the foreign citizens, nr. 200

<sup>42</sup> The Joint United Nations Programme on HIV/AIDS published in May 2009 a survey *Mapping of Restrictions on the entry, stay and residence of people living with HIV*, available [http://data.unaids.org/pub/Report/2009/jc1727\\_mapping\\_en.pdf](http://data.unaids.org/pub/Report/2009/jc1727_mapping_en.pdf)

Avoiding medical examination to detect human immunodeficiency virus (HIV) and also violations by foreign citizens and stateless rules of residence in the Republic of Moldova is sanctioned by the Contravention Code. Thus, the Article 333 of the Contravention Code of the Republic of Moldova<sup>43</sup> stipulates that “violations by foreign citizens and stateless of the rules of residence in the Republic of Moldova, evidenced by residence without identity documents, inauthentic documents or whose term has expired, the evasion of leaving the country's territory after the expiration of stay granted, by infringement of the rules of entry and exit from the Republic of Moldova, by avoiding medical examination to detect human immunodeficiency virus (HIV), by declaring false information to obtain a visa, residence permit or identity card, is imposed to a fine of 50 to 100 conventional units<sup>44</sup> or/ with expulsion from the Republic of Moldova”.

## Article 12

<b>30. Please provide specific information on <u>public information campaigns to combat the spread of HIV/AIDS and other sexually or through injections transmitted diseases.</u></b>
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### *Reply to the issues raised in paragraph 30 of the list of issues*

294. Measures have been taken in capacity building and expanding the activities of information, communication and education on HIV prevention, promoting healthy lifestyles, building and maintaining safe and responsible behaviour for the general public, youth, vulnerable groups.

295. In partnership with representatives of international organizations accredited in the country, the Ministry of Health, the Ministry of Education, local government and civil society, the social and informational events have been organized, including activities devoted to World AIDS Day on December 1, to commemorate AIDS victims. There were developed and published 21 types of informative materials in 4.7 million copies, being later distributed to the population through medical institutions, educational institutions, NGOs and mass- media.

296. Education institutions teach optional subject "Health Education", "Family Life Education", "Civic Education" and "Healthy Lifestyle". Prevention activities for HIV/AIDS among youth according to principle «peer to peer» are performed by 3000 trained trainers. The friendly Health Centres organized and spent 245 seminars and consulting and prevention services provided to 57.000 youth.

297. Documentary film festival took place, which was dedicated to the International Day of Commemoration of persons who died of AIDS, as well as auto-rally "Stop AIDS", Heart Connection Tours "Dance 4Life", etc.

298. The Centre AIDS has green helpline 080080808, which offers advisory services in the public six days each week, 12 hours daily. In furtherance of telephone lines were developed, published and distributed "Green Line" calendar (8000 ex.) and poster (3333ex.).

299. In collaboration with NGOs, 49 prevention programs and projects are produced among: injecting drug users (with activities in 20 villages and suburbs: Chisinau, Balti, Ungheni, Falesti, Glodeni, Orhei, Rezina, Soldanesti, Causeni, Soroca, Floresti, Drochia, Donduşeni, Riscani, Edinet, Otaci, Ocnita, Briceni, including Tiraspol and Slobozia - Transnistria) among prisoners in eight prisons (Cricova-2, Leova, Soroca, Pruncul, Branesti, Rusca and Balti); replacement therapy projects with methadone (including the DRN, Balti Municipal Hospital and five prisons; migrants; long-haul drivers; commercial sex workers; care and support of people with HIV/AIDS, sexual minorities, the project to ensure compliance and increased social support of people with HIV/AIDS on ARV treatment; to protect the rights of HIV/AIDS in Moldova;

<sup>43</sup> Violations of residence rules in the Republic of Moldova

<sup>44</sup> 1 unit is equal to 20 lei. Therefore, the fine would be 1000 lei (equal to 60 Euro) to 2000 lei (120 Euro)

project for drug users increased access to rehabilitation services and psychosocial assistance in the rehabilitation center.

300. Number of beneficiaries at the end of 2009: injecting drug users – 13.050, commercial sex workers – 1116 persons, sexual minorities – 829 persons, persons with HIV/AIDS – 1896 persons, methadone substitution treatment – 270 patients in treatment. Total number of syringes distributed in 2009 was 1,779,443, the number of condoms distributed – 964,044 pieces. In accordance with Government Decision No. 948 of 05.09.2005 "On implementation of the Program on Prevention and Control of HIV/AIDS and sexually transmitted infections", as well as the Government Decision No. 820 of July 4, 2008 "On the National Programme on Prevention and Control of HIV/AIDS and sexually transmitted infections" on 2006-2010", and in conformity with the complex plan of control and prevention of HIV/AIDS in prisons for years 2009-2010, for fully achieving the tackled approach to the prison system, measures have been taken regarding the following issues:

- detection of HIV/AIDS in prisons;
- prevention and control of HIV in prisons (prisoners and prison staff)
- record and monitor cases of HIV/AIDS
- treatment provided to HIV positive prisoners.

301. In this context, the prison system is developing the project "Combating HIV/AIDS in prisons", according to risk reduction strategy, which is done by the NGO "Innovative Projects in Prisons.

302. The main goal of this project is to prevent HIV/AIDS among prisoners by the implementation of harm reduction. The following activities are carried out:

- informational and educational, aimed at changing risky behaviour of prisoners, on different topics: HIV, STDs, viral hepatitis, drug overdose, prevention and treatment of postinjectional complications;
- informational seminars for prison staff;
- selecting volunteers (from prisoners) and implementing risk reduction activities under the principle of 'peer to peer';
- distribution of information materials;
- the exchange of syringes in 9 prisons of the country : No.1-Taraclia, No.4-Cricova, No.3-Leova, No.6-Soroca, No.7-Rusca, No.9-Pruncul, No.11-Balti, No.15-Cricova and No.18-Branesti;
- distributing supplies for HIV and STI prevention (condoms, disinfectants, syringes, alcohol wipes, iodine).

303. In the context of adjusting the legal framework to the international standards guaranteeing the rights of HIV positive people, under the conditions of imprisonment, in June 2004 it was issued the order DIP "Regulation on providing medical assistance to HIV-infected prisoners, that for the first time regulates the medical care for HIV infected prisoners, as a base having the 'World Health Organization Guidelines' that provides:

- ensurance of the confidentiality of medical information regarding HIV-positive prisoners;
- ensurance of the voluntary HIV antibody testing, with counselling "pre" and "post" testing, the presence of the notified agreement for testing prisoner, confidentiality of testing;
- prohibition of forced isolation of HIV positive prisoners under the charter. Isolation is performed only under medical indications;
- ensurance of access of HIV-positive prisoners to treatment of HIV/AIDS.

304. Additionally, in 2008, within the prison system, counselling and voluntary testing for HIV, hepatitis B and C was set up.

305. Methodological recommendations have been developed, which highlight problems of detection, treatment and prevention of tuberculosis in HIV infected persons, tuberculosis features on the background of HIV, HIV testing strategy for tuberculosis patients, tactics and methods of treatment and antiretroviral therapy for TB co-infection / HIV. The recommendations are intended for medical workers within the Ministry of Justice, preventive medicine specialists of HIV/AIDS service, oncology specialists, infectionists, primary care professionals.

306. Antiretroviral treatment (ART) for HIV positive persons and those having AIDS in the prisons was held in Pruncul Prison No. 16 on March 2004, the second center in the country in establishing treatment. The total number of HIV positive prisoners on medical service record, on January 01, 2010 represents 120 prisoners. Currently 45 convicted persons receive antiretroviral treatment.

### **III. COMMENTS OF THE MOLDOVAN INSTITUTE FOR HUMAN RIGHTS REGARDING THE EFFECTIVENESS OF THE INFORMATION CAMPAIGNS TO COMBAT THE SPREAD OF HIV/AIDS AND OTHER SEXUALLY TRANSMITTED DISEASES**

On 01 June 2010, 5,999 persons affected by HIV have been officially registered, inclusively 1,891 in the Transnistrian region. HIV infection is registered among youth, working able persons, sexually active persons, thus 86,02% from the total number of people are between 15-39 age, 23,77% – are of ages between 20-24 and 24,99% – are 25-29 years old.<sup>45</sup> During 1987–2009, 990 persons died of HIV/AIDS in Moldova. AIDS has been diagnosed in case of 887 persons. Currently, the burden of HIV infection is on men and women. The situation changed to some extent after the transition from an outbreak transmitted via injecting drug use in the years 1990-2001 to a prevalent of sexual transmission.

In January 2011, the Sociological Study “Perception of the Moldovan population regarding the phenomena of discrimination”, conducted by the Soros Foundation-Moldova indicated that **56%** of persons who participated in the study consider that people living with HIV are the most frequently discriminated. The tolerance indicator towards the people living with HIV status is of only **5%**<sup>46</sup>, according to the methodology of UNAIDS<sup>47</sup>.

Organizing round tables in different districts of the country<sup>48</sup> with the participation of local public authorities and other relevant actors, such as City Halls, District Councils, Department of Education, Youth and Sport, Civil Status Offices, Employment Agencies, District Hospitals, Family Doctors’ Centers, Children’s Centers, Department for under-aged of the Regional Police Offices, Prosecutor’s Offices, Regional Departments of the Registry Offices, Departments of Social Assistance and Family Protection and representatives of different schools, we learned that nowadays youth lack knowledge related to healthy sexual life. There are only some thematic hours, organized by the class masters who may invite doctor(s) (such as gynecologist, infectionists, epidemiologist) and/or local relevant NGOs to talk to pupils about sexual transmitted diseases, methods of contraception, HIV issues etc.; but this is not enough. One of the

<sup>45</sup> Governmental Decision of the Republic of Moldova no. 1143 of 16 December 2010, regarding the approval of the National Program on prevention and control of HIV/AIDS and sexual transmitted infections during 2011-2015, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=337100> (27.02.2011).

<sup>46</sup> Ibidem, pag. 5.

<sup>47</sup> Sociological Study „Perception of the Moldovan population regarding the phenomena of discrimination”, available at <http://soros.md/files/publications/documents/Studiu%20Sociologic.pdf> (27.02.2011), 1<sup>st</sup> ed., January 2011, 3, 5.

<sup>48</sup> In Orhei on 25 February 2010, in Balti on 24 March 2010, in Causeni on 6 May 2010, in Cahul on 8 June 2010, in Comrat on 27 July 2010, in Ungheni on 30 September 2010, in Soroca on 19 October 2010, in Leova on 16 November 2011, in Vulcanesti on 03 March 2011 and in Cantemir on 22 March 2011.

basic recommendations from such round tables was the necessity of introducing in the curricula of the schools a special course related to healthy life style. The professors indicated that they see a negative impact<sup>49</sup> on the fact that the course “Life skills” (“Deprinderi de Viață”) was withdrawn<sup>50</sup> in 2005 from the school curricula by the Ministry of Education, at the request and protests of the representatives of the Moldovan Orthodox Church<sup>51</sup>.

There are cases<sup>52</sup> when 12-16 years old girls gave birth<sup>53</sup> to babies and some of them stated the sexual life at the age of 12.

## Articles 13 and 14

**32. Please provide disaggregated data on a comparative basis on primary and secondary education enrolment and dropout rates, among children in general, and marginalized and disadvantaged groups and individuals in particular, such as Roma, children with disabilities and children affected by HIV/AIDS.**

*State Reply to the issues raised in paragraph 32 of the list of issues.*

332. According to statistics, the gross enrolment rate in primary education in 2009 amounted to 93.5% compared to 96.7% in 2005. Gross enrolment rate in secondary education in 2009 was 88.8%, compared to the 93.0% achieved in 2005.

Indicators	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009*
Gross enrollment rate in primary education, %	99,4	99,5	99,5	99,8	97,9	96,7	94,4	<b>94,0</b>	<b>93,6</b>	<b>93,5</b>
Gross enrollment rate in secondary education, %	90,2	91,1	92,3	92,2	92,5	93,0	90,5	<b>90,1</b>	<b>89,3</b>	<b>88,8</b>

333. Statistical data on educational enrolment rates by education level and by age groups are shown in Annex 1 of the Report.

334. Statistical information on indicators of the preschool institutions for years 1998-2009: number of institutions, places, children, teachers and number of children per one teacher in preschool institutions, including the appearance of forms of property is reflected in Annex 1 of the Report.

335. Also in the Annex 1 the statistics of educational institutions of primary and secondary schools by area of residence and ownership is presented.

336. However, official statistics does not have disaggregated information based on comparative education and dropout rates, among the marginalized and disadvantaged groups in particular, such as the Roma, children with disabilities etc.

<sup>49</sup> <http://www.curaj.net/?p=228>

<sup>50</sup> Articles in the newspapers <http://www.zdg.md/64/social/1.php> (available on 30 March 2011) .

<sup>51</sup> <http://www.cartier.md/carti/deprinderi-de-viata-ghid-metodologic-%28rus%29/449.html>.

<sup>52</sup> <http://m.protv.md/stiri/social/caz-cutremurator-la-codreanca-o-fetita-de-16-ani-a-nascut-un-copil.html>;

<http://m.protv.md/stiri/social/o-eleva-de-16-ani-a-nascut-in-veceul-unui-camin-din-capitala.html>;

<http://m.protv.md/stiri/social/o-adolescenta-din-comrat-a-nascut-un-copil-la-varsta-de-12-ani.html>.

<sup>53</sup> On 06 March 2011 (a girl of 16 years gave birth to a baby) ; On 29 March 2010 (a girl of 12 years old from Comrat gave birth to a baby).

### III. COMMENTS OF THE MOLDOVAN INSTITUTE FOR HUMAN RIGHTS ON THE STATE'S REPLY TO THE INFORMATION REGARDING THE DISAGGREGATED DATA ON A COMPARATIVE BASIS ON PRIMARY AND SECONDARY EDUCATION ENROLMENT AND DROPOUTS AMONG CHILDREN AFFECTED BY HIV/AIDS

The state did not provide the Committee on Economic, Social and Cultural Rights disaggregated data on comparative education and dropout rates, among the marginalized and disadvantaged groups in particular, such as the Roma, children with disabilities, including children affected by HIV/AIDS.

The Moldovan Institute for Human Rights registered a case<sup>54</sup> when the parents had to remove child from the kindergarten because it was disclosed by the social worker the fact that the child and parents are affected by HIV. At the time when the kids are enrolled in the preschool or primary education the parents must present medical certificate regarding medical status of the child. Beside this, according to the Article 15 regarding the education<sup>55</sup>, the psychophysiological diagnostics of skills and abilities of students, as a basis for achieving the educational process of differentiation is mandatory.

**33. Please elaborate upon measures taken to improve access to basic education for children living in rural areas and children with special needs, including children with disabilities, children in conflict with law, HIV/AIDS-affected children, children left without parental care and Roma children.**

*State Reply to the issues raised in paragraph 33 of the list of issues.*

337. Education Law determines education as national priority in Moldova. State educational policy is based on the principles of humanitarization, accessibility, adaptability, creativity and diversity. Education is democratic and humanistic, open and flexible, formative and developing and is based on national and universal cultural values.

338. State education is secular, refractory to ideological, political, racial, national discrimination.

339. Improving the legal framework in accordance with the requirements of modern society, international law and European standards have highlighted the need for a new Education Code. Education Code Bill consists of 14 titles, 43 chapters and 166 articles. The project was subject to public debates, consultations have been held with representatives of the OSCE and at roundtable with the participation of the International Monetary Fund, World Bank, UNICEF etc. At the moment the bill of Education Code was endorsed to the central public authorities.

340. Strengthen strategy of education for the years 2011-2015 and reinforced the Action Plan of the education sector for the years 2011 – 2015 was developed.

341. **Major goal of education**, under education law in force, consists in free and harmonious development of **human** being and the formation of creative personality that can adapt to changing conditions of life.

342. By Article 6 of the Education Law, the right to education which is guaranteed is confirmed, regardless of nationality, sex, age, origin and social status, political or religious beliefs, criminal record. The state ensures equal access to state institutions of high school education, vocational, and higher education, according to abilities and capabilities.

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<sup>54</sup> Case MV 0045 registered on 26 April 2010: HIV status of baby girl of 5 years old was divulged by the social worker to the kindergarten in a village from Comrat rayon. The attitude of the educator, director and kindergarten's staff changed in a negative way towards the baby, thus the parents decided to withdraw the kid from the institution. The natives from the villages also found out about the HIV status of the baby. Parents left with the baby the village and moved to the Russian Federation.

Case DI 0025 registered on 03 March 2010.

<sup>55</sup> Law no. 547, adopted on 21 July 1995, <http://www.edu.md/?MenuItem=6&SubMenu0=1&SubMenu1=1&lng=ro>.

343. Citizens' right to mother tongue education is ensured by creating the necessary number of educational institutions, classes, and their operating conditions. The level of participation to education, during the years 2000-2009, is determined mainly by the country's demographic situation.
344. The network of secondary education institutions in the country in the 2009-2010 academic year includes 1512 institutions (primary schools, secondary schools, general secondary schools, high schools) with a total of 415.462 pupils, including 413.657 students studying in day schools, 245.050 of which or 59.2% study in rural areas.
345. Beginning with 1992-1993 academic years, the Ministry of Education develops curricula for teaching in native official language, and curricula to study native languages as a subject of study.
346. Modernized school curriculum (2010) in all subjects was developed as well as for native language (Russian, Ukrainian, Gagauz, Bulgarian) for grades I-XII; implementation guide of the curriculum in the native languages for grades IV-XII; language and literature textbooks in Russian, Ukrainian, Gagauz, Bulgarian for classes I-IX.
347. ***Solution of the problems that the Roma population faces*** with is achievable by actions taken by the administrative structures to support Roma people in overcoming difficulties and the desire of Roma population to understand and tackle their own problems. Beginning with the 2000-2001 school year in classes V-IX, and in 2009-2010, in classes I to XII, is implemented the course "Civic education" as a compulsory subject, aimed at developing citizens in the construction of complex contemporary world: the acquisition of knowledge about human rights and fundamental obligations man and developing the skill to implement them in everyday life; education on the basis of the general and democratic human values; developing sense of responsibility for social actions; cultivation of civic sense.
348. Actions taken to improve education and literacy among Roma children, participation of Roma children and youth in education system are reflected in art. 2, paragraph 2, section 4, in the context of achieving the Action Plan to support Roma people in the Republic of Moldova for 2007-2010.
349. To ensure access to basic education of children who are in conflict with the law, especially achieving the right to general education and continuity of the training process, beginning with 2008 the process of general education in isolation rooms of prosecution started. Previously, training juveniles in detention was made exclusively in Penitentiary No.2- Lipcani (prison for minors).
350. Subsequently, in 2009, the joint order of the Ministry of Education and Youth (No.409 of 01.05.09), Ministry of Justice (No.217 04.05.2009), Ministry of Local Public Administration (No. 63 of 01.05.2009) and the Ministry of Finance (No.48 of 04.05.2009) was signed regarding the opening, from 01.09.2009 training classes of juvenile detainees in prisons, affiliated to schools, gymnasiums and lyceums close to prison.
351. Courses are conducted by teachers of the institutions, which are related to juvenile detainees training classes, being taught the following disciplines of the general education program: Romanian language, mathematics, geography, we and law, life skills. Taking into account the specifics of the activity of the detention institution, the curriculum is streamlined and connected to the particular category of students. Thus, according to the study program the number of hours varies from 20 hours per week in the Penitentiary No.2- Lipcani and 10 hours per week in the of rest mentioned prisons.
352. Since the beginning of the academic year 2010 - 2011, were enrolled and receive general training 61 juvenile prisoners and the total of them is 71 (5 - aged between 14 and 16; 66 - aged from 16 to 18. In the Penitentiary No. 2- Lipcani execute the sentence in juvenile prison conditions the youths aged from 19 to 23 years, qualified under the laws in force.
353. Since 2008, the prison system successfully implemented the literacy program for all categories of prisoners that are illiterate.

354. In order to carry out vocational education activities in prison, there operate six vocational schools and three vocational training classes. Currently detainees from nine prisons receive professional training and these courses are graduated each year by about 650 convicted.

### **III. COMMENTS OF THE MOLDOVAN INSTITUTE FOR HUMAN RIGHTS ON THE STATE'A REPLY TO THE INFORMATION REGARDING THE ACCESS IMPROVEMENT OF BASIC EDUCATION FOR HIV/AIDS INFECTED CHILDREN**

The Moldovan Institute for Human Rights litigated a case (ID-0157/ 12 November 2011) where the boy was refused to be placed in a boarding school/internat because of HIV status. The director of the school stated that he refuses to accept the child in the institution until there would be a letter of acceptance issued by the Ministry of Education regarding the placement of the boy with HIV in the boarding school. In another case from rural area, the parents had to remove the child from the kindergarten because it was impossible to fear the ignorance and the negative attitude towards the child and the parents who were HIV positive. The disclosure of HIV status was done by the social worker of the district Social Assistance. The parents and their child left the country and moved to the Russian Federation, and one of the cause, as they stated, was the disclosure of the information and discrimination they were facing.

#### **IV. RECOMMENDATIONS FOR CONCLUDING OBSERVATIONS**

##### **The Committee on Economic, Social and Cultural Rights is called to encourage the Government of the Republic of Moldova to:**

1. Adopt the draft Anti-discrimination Law in conformity with International and European standards;
2. Monitor and evaluate the negative practices of breaching the confidentiality in medical institutions and stop breaches of confidentiality and negligent attitude of the medical staff towards people living with HIV/AIDS in order to ensure that people living with HIV have adequate and equal access to quality health care;
3. Eliminate the mandatory indication of the disease codes in all medical sick leave forms in the country;
4. Introduce and implement human rights courses for medical students and provide human rights trainings for medical staff on patients' rights, human rights and HIV/AIDS;
5. Amend the inter-ministerial regulatory framework and the Decision of the Moldovan Government no. 512 of 25 April 2003 in order to permit the adoption of children with HIV/AIDS, as well as the adoption of children by persons with HIV/AIDS;
6. Amend the Article 24 para 1 of the Law on HIV/AIDS infection prevention (no. 23-XVI of 16 February 2007) that require negative HIV results as a pre-condition for granting a residence permit in Moldova;
7. Eliminate barriers to access residential state social institutions with regard to persons in need of special social care;
8. Improve regulatory framework and practice with regard to mandatory HIV/AIDS testing for being employed, providing a renewed and updated list of jobs for which a medical testing is needed, as well as for ensuring that persons living with HIV/AIDS are not unjustifiably limited to the right to equal job opportunity;
9. Amend the Order and Regulation on preventive measures against the antisocial actions of patients suffering from chronic alcoholism and drug addiction, by excluding the sharing of monthly information to internal affairs bodies on the names and surnames of people registered at the narcologists;
10. Introduce and implement human rights trainings for police officers, prosecutors, judges, teachers, educators on issues related to the protection of personal data, including medical data, right to private life, confidentiality, human rights and HIV/AIDS;

11. Review the procedure provided by the Contravention Code with regard to the examination of the administrative offences related to the disclosure of the medical information regarding the HIV status and to empower the National Center for Protection of Personal Data with the right and obligation to examine and impose sanctions on such offences;

12. Introduce the course “Life skills” (“Deprinderi de Viață”) in the school curricula in order to inform the young generation about the forms of contamination with HIV/AIDS, sexually or through injections.