



**COMPATIBILITY REPORT 2018**

National criminal norms and relevant  
international standards in the area  
of sexual offenses

The Compatibility Report "National criminal norms and relevant international standards in the area of sexual offenses,, was developed within the framework of the project "Ensuring access of victims of sexual assault to adequate legal and social protection", implemented by the CSO "International Center for Women's Rights Protection and Promotion "La Strada", with financial support of the US Embassy in Moldova.

The results, conclusions and recommendations of this publication are the opinions of the author and the group of consultants and do not necessarily reflect the position of the US Embassy in Chisinau.

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# INTRODUCTION

This Report is the product of a comparative analysis of national criminal legislation in the area of sexual offenses (Criminal Code of the Republic of Moldova, Special Part, Chapter IV) and relevant standards of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Statute of the International Criminal Court (Rome Statute), and other international treaties.

The report objectives are:

- to determine the degree of compatibility of the domestic legal framework involving the recognition of acts of sexual violence and sexual abuse as crimes, as provided by the requirements of relevant international treaties to which Republic of Moldova has expressed or is in the process of expressing its commitment, aiming at ensuring their proper implementation at the national level;
- to formulate recommendations aimed at reviewing the legislative framework where necessary in order to exclude differentiated and/or discriminatory approaches, and increase the effectiveness of state's response in the process of preventing and combating actions that invade the inviolability or sexual freedom of the person.

From the methodological point of view, the actual activity was accomplished in several stages:

1. analyzing the results of relevant researches at the national level, examining the legal framework and other sources of national law, relevant sections of the doctrine on how to understand and apply criminal provisions related to sexual offenses;
2. identifying and analysing international treaties with standard norms defining sexual violence and sexual abuse, and sexual acts;
3. identifying discrepancies or gaps in the national legislation that need to be removed or at least minimized;
4. consulting the Report with members of the working group created for the implementation of this project (representatives of the Supreme Court of Justice, General Prosecutor's Office, General Police Inspectorate, specialized NGOs);
5. developing recommendations that we believe are reasonable in order to corroborate the domestic legal framework with provisions of international treaties.

The report includes several sections reflecting the actual situation and national legislation regarding sexual offenses, relevant norms from international law, a section that includes the comparative analysis of the subject matter and final conclusions.

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## List of abbreviations:

**CC** – Criminal Code of the Republic of Moldova

**CPC** – Criminal Procedural Code of the Republic of Moldova

**Istanbul Convention** – Council of Europe Convention on preventing and combating violence against women and domestic violence

**ICC Statute** – Statute of the International Criminal Court (Rome Statute)

**Lanzarote Convention** – Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse



I.

NATIONAL CRIMINAL LEGISLATION  
AGAINST SEXUAL VIOLENCE  
AND SEXUAL ABUSE





The Constitution of the Republic of Moldova<sup>1</sup> enshrines the respect and protection of the person as the primary duty of the state, as well as the equality of citizens before the law and public authorities, regardless of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, or social origin<sup>2</sup>.

The state guarantees every individual the right to physical and mental integrity<sup>3</sup>, the inviolability of individual's freedom and safety<sup>4</sup>, protects

the intimacy, family and private life<sup>5</sup>. The intimacy of the person and its individual freedom include sexual inviolability and freedom.

- ◆ In order to achieve the constitutional provisions, the **Criminal Code of the Republic of Moldova**<sup>6</sup> contains a distinct chapter (**Special Part, Chapter IV. Sexual Offenses**), which establishes the harmful facts invading the inviolability, and freedom of the person and are subject to criminal punishment.

## Chapter IV. SEXUAL OFFENSES

### Article 171. Rape

**(1)** Rape, i.e. sexual intercourse committed by the physical or mental coercion of the person, or by taking advantage of the victim's incapacity to defend himself/herself or to express his/her will shall be punished by imprisonment for 3 to 5 years.

**(2)** Rape:

- a) committed by a person who has previously committed rape as set forth in paragraph (1);
  - b) committed knowingly against a juvenile;
  - b<sup>1</sup>) committed knowingly against a pregnant woman;
  - b<sup>2</sup>) committed against a family member
  - c) committed by two or more persons;
  - e) committed for the intentional contamination of the victim with a sexually transmitted disease;
  - f) committed with great cruelty, and for sadistic reasons;
- shall be punished by imprisonment for 5 to 12 years.

**(3)** Rape:

- a) of a person under the care, custody, protection, education, or treatment of the perpetrator;
  - b) of a juvenile under the age of 14;
  - c) involving deliberate contamination with AIDS;
  - d) that causes by imprudence severe bodily injury or damage to health;
  - e) that causes by imprudence the death of the victim;
  - f) that results in other severe consequences,
- shall be punished by imprisonment for 10 to 20 years or by life imprisonment.

<sup>1</sup> Constitution of the Republic of Moldova, adopted on 29.07.1994. (Official Gazette of the Republic of Moldova, No. 1 of 12.08.1994)

<sup>2</sup> Ibidem, art. 16.

<sup>3</sup> Ibidem, art. 24.

<sup>4</sup> Ibidem, art. 25.

<sup>5</sup> Ibidem, art. 28.

<sup>6</sup> Criminal Code of the Republic of Moldova, No. 985-XV of April 18, 2002. (Official Gazette of the Republic of Moldova, 2009, No. 72-74, article 195).

### **Article 172. Violent sexual actions**

**(1)** *Homosexuality or satisfying sexual needs in perverted forms committed through the physical or mental coercion of the person or by taking advantage of the person's incapacity to defend himself/herself or to express his/her will shall be punished by imprisonment for 3 to 5 years.*

**(2)** *The same actions:*

*a) committed by a person who has previously committed an action as set forth in par. (1);*

*b) committed knowingly against a juvenile;*

*b<sup>1</sup>) committed knowingly against a pregnant woman;*

*b<sup>2</sup>) committed against a family member;*

*c) committed by two or more persons;*

*d) committed for the intentional contamination of the victim with a venereal disease;*

*g) committed with great cruelty, and for sadistic reasons; shall be punished by imprisonment for 5 to 12 years.*

**(3)** *The actions set forth in par.(1) or (2), which are:*

*a) committed against a person certainly known to be under the age of 14;*

*a<sup>1</sup>) committed against a person who is under the care, guardianship, protections, education or treatment of the perpetrator;*

*b) that cause deliberate contamination with AIDS;*

*c) that cause by imprudence severe bodily injury or damage to health;*

*d) that cause by imprudence the death of the victim;*

*e) that result in other severe consequences;*

*shall be punished by imprisonment for 10 to 20 years or by life imprisonment.*

### **Article 173. Sexual harassment**

*Sexual harassment, namely the manifestation of a physical, verbal or non-verbal behavior that harms the dignity of a person or creates an unpleasant, hostile, degrading, humiliating, discriminatory or insulting atmosphere in order to determine a person to sexual intercourse or other unwanted sexual actions, committed by threat, coercion, blackmail, is punishable by a fine from 650 to 850 conventional units or by community service from 140 to 240 hours or by imprisonment for up to 3 years.*

- ♦ With a view to adjusting national criminal legislation to the provisions of the **Council of Europe Convention on protection of children against sexual exploitation and sexual abuse** (Lanzarote Convention), through **Law no. 73 of 12.04.2012 for amending and supplement-**

**ing several legislative acts (in force as of 25.05.2012)<sup>7</sup>, paragraph 1 of article 174 and article 175 of the Criminal Code** were presented in a new wording. At the same time, the Criminal Law was supplemented with new norms.

<sup>7</sup> Law no. 73 of 12.04.2012 for amending and supplementing some legislative acts. (Official Gazette of the Republic of Moldova, 2012, No. 99-102, article 332)

<sup>8</sup> Law no. 121 of 02.06.2016 for the amendment of Article

175<sup>1</sup> of the Criminal Code, in force since 01.07.2016, (Official Gazette of the Republic of Moldova, 2016, No. 184-192, article 395)

**Article 174. Sexual Intercourse with a person under the age of 16**

**(1)** Sexual intercourse other than rape, as well as any other acts of vaginal, anal or oral penetration and other committed with a person certainly known to be under the age of 16 shall be punished by imprisonment from 3 to 7 years.

**(2)** The person who committed the act set forth in par. (1) shall not be subject to criminal liability if he/she is similar to the victim in terms of age and physical and mental development.

**Article 175. Perverse actions**

The perverse actions committed against a person who is certainly known not to have reached the age of 16, consisting in exhibition, indecent touches, obscene or cynical discussions with the victim regarding sexual relations, determination of the victim to attend or assist pornographic performances, the provision of pornographic materials to the victim, as well as for other sexual actions, shall be punished by imprisonment from 3 to 7 years.

**Article 175<sup>1</sup>. Grooming of children for sexual purposes**

The proposal, including through information and communication technologies, to meet with a child for the purpose of committing any sexual offense against him, if the proposal was followed by material facts leading to such a meeting, is punishable by imprisonment from 1 to 5 years.

- ◆ Consequently<sup>8</sup>, **article 175<sup>1</sup> from the Criminal Code** was approved in a new wording, and the current contents are as follows.

**Article 175<sup>1</sup>. Solicitation of a minor for sexual purposes**

**(1)** Proposal, persuasion, manipulation, threat, promise to provide benefits in any way, including through information technologies or electronic communications, in order to establish a meeting with a minor, to the purpose of committing against it any sexual offence, if these actions were followed by material facts leading to such a meeting, shall be punished by imprisonment from 2 to 6 years.

**(2)** The same actions committed:

- a) against a minor who is in a state of helplessness due to a disease or disability;
- b) by a member of the minor's family, by a person living with the minor or by a person under whose care, protection or education or treatment the minor is;
- c) by a person who was previously convicted of a sexual offence or other acts relevant for that case are punishable by imprisonment from 3 to 8 years.

According to the explanatory Note to the draft law, the new wording of art. 175<sup>1</sup> of the Criminal Code was prescribed by the urgent need "...to detail and broaden the range of means through which the minor can be exploited and to increase the level of protection of the minor against potential criminals."

- ♦ At the same time as ratifying the **Statute of the International Criminal Court**, Republic of Moldova has also taken on the obligation to adjust the national criminal legislation to

the standards of this international treaty. For this purpose, **Law no. 64 of 04.04.2013 was adopted for amending and supplementing the Criminal Code of the Republic of Moldova no. 985-XV of 18 April 2002 (in force from 21.05.2013)**<sup>9</sup>, through which, among others, the criminal legislation was supplemented with a new norm - art. 135<sup>1</sup> CC, while art. 137 CC was adopted in a new wording. The mentioned criminal norms contain provisions that also criminalize acts of a sexual nature.

### **Article 135<sup>1</sup>. Offences against humanity**

**(1)** *The commission, in a generalized or systematic attack launched against a civil population aware of such attack, of one of the following acts:*

- a) subjecting to slavery or human trafficking;*
- b) forced deportation or transfer, in violation of the general rules of international law, of persons that are lawfully on the territory where the attack was launched;*
- c) arrest or other form of deprivation of physical freedom in violation of the general rules of international law;*
- d) torture of a person under the guard of the perpetrator or over whom the latter exercises control in any other way, causing serious injury to bodily integrity or health, pain or psychological suffering, that exceed the consequences of the sanctions permitted by international law;*
- e) rape, sexual exploitation, coercion to prostitution, illegal detention of a woman impregnated in a forced way, for the purpose of altering the ethnic composition of a population, forced sterilization or any other form of sexual violence;**
- f) persecution of a group or a determined community, by depriving them of fundamental human rights or by restricting the exercise of such rights, on political, racial, national, ethnic, cultural, religious, sexual grounds or according to other criteria recognized as inadmissible by the international law;*
- g) causing the forced disappearance of a person, in order to escape from the protection of the law, by kidnapping, arrest or detention, based on the order of a state or political organization or by their authorization, support or permission, followed by the refusal to admit that such person is deprived of freedom or to provide real information on the fate reserved to it or the place where it is, as soon as such information was requested;*
- h) the application of apartheid practices;*
- i) other inhuman acts of a similar nature that intentionally cause serious physical or mental suffering or serious injury to bodily integrity or health of the person, shall be punished by imprisonment from 10 to 20 years.*

**(2)** *The commission, under the conditions indicated at par. (1), of one of the following acts:*

- a) killing one or more persons;*

<sup>9</sup> Law no. 64 of 04.04.2013 for amending and supplementing the Criminal Code of the Republic of Moldova, no. 985-XV of 18 April 2002. (Official Gazette of the Republic of Moldova, 2013, No. 115, article 359)

*b) subjecting a population or parts of it, to the purpose of destroying it wholly or partially, to living conditions destined to determine its physical destruction is punishable by imprisonment from 15 to 20 years or by life imprisonment.*

### **Article 137. War crimes against individuals**

**(1)** *The commission of one of the following acts in an international armed conflict:*

- a) coercion, by violence or threat, of one or more persons provided at art. 127<sup>1</sup> let. a) to enlist in the enemy armed forces;*
- b) to force the enemy's citizens to take part in military operations directed against their country, even if they were enlisted in the armed forces of this enemy before the armed conflict began;*
- c) the unlawful keeping in detention or the unjustified delay of the repatriation of one or more persons provided at art. 127<sup>1</sup> lett. a);*
- d) the direct or indirect transfer, by an agent of the occupying party, of a part of the civil population to which it belongs, in the occupied territory, the deportation or transfer by it, inside or outside the occupied territory, of the entire civil population of that territory or of a part thereof, shall be punished by imprisonment from 3 to 10 years.*

**(2)** *Exposing, in an armed conflict with or without international nature, a person protected by the humanitarian international law to the danger of death or serious injury to health by:*

- a) performing any kind of experiments that are not determined by a medical, therapeutical, hospital treatment to which the person did not voluntarily, expressly and priorly consent and which are not performed in its interests;*
- b) the collection of tissues or organs for transplant, except for blood or skin sampling for therapeutic purposes in compliance with the generally accepted medical principles and with the voluntary, express and prior consent of the person;*
- c) subjection to unrecognized medical treatment methods, without being necessary for the health of the person and without its voluntary, express and prior consent, is punishable by imprisonment from 8 to 12 years with the deprivation of the right to hold certain positions or exercise a specific activity for a period of 3 to 5 years.*

**(3)** *The commission, in an armed conflict with or without international nature, against one or more persons protected by the humanitarian international law, of one of the following acts:*

- a) the intentional infliction of serious physical or psychological suffering or serious injury to bodily integrity or health;*
- b) the application of torture or the subjection to inhuman or degrading treatment, as well as mutilation;*

**c) rape, sexual exploitation, coercion to prostitution, illegal detention of a woman impregnated in a forced way, to the purpose of altering the ethnic composition of a population, forced sterilization or any other violent sexual act;**

d) taking hostages;

e) deportation or forced transfer, in violation of the general rules of international law, of persons who are legally on the territory where the armed conflict takes place;

f) the recruitment and incorporation of children who have not reached the age of 18 in the national armed forces and their determination by any means to actively participate in military operations;

g) the deprivation of the right to be tried by a lawfully constituted and impartial court, the ruling of the punishment or execution of the punishment without complying with legal and impartial proceedings, which should provide the guarantees imposed by the international law, shall be punished by imprisonment from 10 to 20 years.

**(4)** The commission, in an armed conflict with or without international nature, of the murder of one or more persons protected by the humanitarian international law shall be punished by imprisonment from 15 to 20 years or by life imprisonment.

- ♦ In order to protect individuals, including juveniles from sexual abuse and sexual exploitation, criminal law provides for other norms as well.

#### **Article 165. Trafficking in Human Beings**

**(1)** The recruitment, transportation, transfer, harbouring or receipt of a person, with or without his/her consent, for the purpose of commercial or non-commercial sexual exploitation, for forced labor or services, for begging, for slavery or similar conditions, for use in armed conflicts or criminal activities, for the removal of human organs or tissues, as well as the use of the woman as a surrogate mother, committed by:

a) the threat of physical or mental violence not dangerous to the person's life and health, including kidnapping, the seizure of documents, and servitude for the purpose of paying a debt, the amount of which was not set within a reasonable limit, as well as through the threat of disclosure of confidential information of the family of the victim or of other persons, both individuals and legal entities;

b) deception;

c) the abuse of vulnerability or abuse of power, giving or receiving payments or benefits to get the consent of a person controlling another person; shall be punished by imprisonment for 6 to 12 years with the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years, whereas a legal entity shall be punished by a fine in the amount of

4000 to 6000 conventional units with the deprivation of the right to practice certain activities or the liquidation of the legal entity.

**(2)** The same actions committed:

- a) by a person who previously committed an act set forth in par. (1);
- b) against two or more persons;
- c) against a pregnant woman;
- d) by two or more persons;
- e) by an official or a high-ranking official, a foreign public official or an international official ;
- f) with violence dangerous to the person's life, physical or mental health;
- g) with torture, inhumane or degrading treatment aimed at ensuring the person's subordination, or with the use of rape, physical dependence, or a weapon;

shall be punished by imprisonment for 7 to 15 years with the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 6000 to 8000 conventional units with the deprivation of the right to practice certain activities or the liquidation of the legal entity.

**(3)** The actions set forth in par. (1) or (2):

- a) committed by an organized criminal group or by a criminal organization;
- a<sup>1</sup>) accompanied by contamination with a sexually transmitted disease or AIDS;
- b) that cause severe bodily injury or a mental disorder, or the death or his/her suicide;

shall be punished by imprisonment for 10 to 20 years with the deprivation of the right to hold certain positions or to practice certain activities for 3 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 8000 to 10000 conventional units with the deprivation of the right to practice certain activities or the liquidation of the legal entity.

**(4)** The victim of trafficking in human beings shall be exempted from criminal liability for any crimes committed by him/her in relation to this procedural status.

#### **Article 206. Child trafficking**

**(1)** The recruitment, transportation, transfer, harbouring or reception of a child, as well as the giving or receiving of payments or benefits in order to obtain the consent of a person holding control over a child, to the purpose of:

- a) sexual, commercial and non-commercial exploitation, for prostitution or in the pornographic industry;
- b) exploitation by forced labor or services;
- b<sup>1</sup>) practicing begging or other mean purposes;
- c) exploitation in slavery or in conditions similar to slavery, including in the case of illegal adoption;
- d) use in armed conflicts;
- e) use in criminal activity;
- f) collection of human organs, tissues and/or cells;
- h) sale or purchase,

shall be punished by imprisonment from 10 to 12 years, with the deprivation of the right to hold certain positions or exercise a specific activity for a period

of 2 to 5 years, and the legal entity shall be punished by a fine from 4000 to 6000 conventional units, with the deprivation of the right to exercise a specific activity or by the liquidation of the legal entity.

**(2)** The same actions accompanied by:

a) physical and/or psychological violence, application of firearms or threat to apply them;

b) sexual abuse and/or sexual violence

c) profiting from abuse of authority or vulnerability state of the child, threatening the disclosure of confidential information to the child's family or other persons;

f) collecting human organs, tissues and/or cells.

shall be punished by imprisonment from 10 to 15 years, with the deprivation of the right to hold certain positions or exercise a specific activity for a period of 2 to 5 years, and the legal entity shall be punished by a fine from 6000 to 8000 conventional units, with the deprivation of the right to exercise a specific activity or by the liquidation of the legal entity.

**(3)** The actions provided at par. (1) or (2):

a) committed by a person who previously committed the same actions;

b) committed against two or more children;

b<sup>1</sup>) committed by two or more persons;

c) committed by a public person, by a person with responsibility position, by a person with public dignity position, by a foreign public person or an international official;

d) committed by an organized criminal group or by a criminal organization;

d<sup>1</sup>) accompanied by the child's contamination with an STD or AIDS illness;

e) resulting in the serious injury to bodily integrity or mental illness, death or suicide of a child;

e<sup>1</sup>) committed against the child under the care, protection, education, or treatment of the perpetrator;

f) committed against a child aged under 14 shall be punished by imprisonment from 15 to 20 years, with the deprivation of the right to hold certain positions or exercise a specific activity for a period of 3 to 5 years or by life imprisonment, and the legal person is punishable by a fine from 8000 to 10000 conventional units, with the deprivation of the right to exercise a specific activity or by the liquidation of the legal entity

**(4)** The victim of child trafficking is released from criminal liability for the offences committed by it in connection with this procedural capacity.



### **Article 208<sup>1</sup>. Child pornography**

*Producing, distributing, broadcasting, importing, exporting, offering, selling, purchasing, changing, using or holding images or other representations of one or more children involved in explicit, real or simulated sexual activities or images or other representations of a child's sexual organs, represented in a lascivious or obscene manner, including in electronic form, shall be punished by imprisonment from 1 to 3 years, by a fine imposed on the legal entity from 3000 to 5000 conventional units with the deprivation of the right to exercise a specific activity.*

*[Art. 208<sup>1</sup> supplemented by Law nr. 73 from 12.04.2012, in force from 25.05.2012].*

### **Article 208<sup>2</sup>. Recourse to child prostitution**

*Exploiting, against any material benefits, the sexual services provided by a person who is certainly known not to have reached the aged of 18 is punishable by imprisonment from 3 to 7 years. [Art. 208<sup>2</sup> introduced through Law nr. 73 from 12.04.2012, in force from 25.05.2012]*

As one may see, national legislation contains several criminal norms that establish liability for invading person's sexual freedom and inviolability. However, in the Republic of Moldova combating sexual offenses remains a problematic segment. According to a recent study<sup>10</sup>, one in five men had sex with a woman without her consent, while almost one in four men had sex with a woman who could not express her consent due to alcohol intoxication. At the same time, 18% of interviewed men admitted they used force to have sex with their current partner, while 14% of respondents used force to have sex with a former partner<sup>11</sup>. Meanwhile, the statistical data in recent years show a relatively constant number in the Republic of Moldova and, given the results of the study, much below the real number of sexual offenses. Thus, in 2011, 462 sexual offenses were registered, and in 2012 the number of offenses registered increased to 618 cases, while in 2013 it would decrease to 608 offenses. In 2014 there was again a slight increase in the number of sexual offenses, reaching 648 cases.

Since 2015 there has been a steady decrease in the number of offenses in this category: 639 registered sexual offenses in 2015, 618 cases registered in 2016, and finally 578 offenses registered in 2017, including: rape - 296 cases or 51% ; violent sexual actions - 85 cases or 15%; sexual harassment - 28 cases or 5%; sexual intercourse with a person who is under the age of 16 - 125 cases or 22%; perverse actions - 44 cases or 7%. It is also noted that 19 offenses were committed by minors.

The relatively constant figure of sexual offenses in recent years, shows among others that one of the main purposes of the punishment set out in the Criminal Code, namely the prevention of other crimes from occurring is not achieved. These circumstances, as well as the number of offenses recorded far below the estimates contained in previous research, determined the need to carry out the Study "Analysis of judicial practice on sexual offenses to identify gaps that deprive victims of effective remedy and protection"<sup>12</sup> by the International Center for the Protection and Promotion of Women

<sup>10</sup> Men and gender equality in the Republic of Moldova. Women's Law Center, 2015; available on: [cdf.md/files/resources/130/Raport\\_Barbatii%20si%20egalitatea%20de%20gen.pdf](http://cdf.md/files/resources/130/Raport_Barbatii%20si%20egalitatea%20de%20gen.pdf)

<sup>11</sup> Ibidem

<sup>12</sup> Ensuring the rights of victims of sexual offenses. Analysis of Judicial Practice in the Republic of Moldova. International Center "La Strada", 2017; available on: <http://lastrada.md/ro.electronic.pdf>

Rights “La Strada”, with the financial support of the US Embassy in Chisinau. The study reveals two conclusions that deserve attention in the context of this Report:

- Moldova’s criminal legislation in the area of sexual offenses is not corroborated with the requirements of relevant international standards developed from the perspective of promotion and protection of fundamental human rights;
- the national mechanism for judicial investigation and examination of criminal cases related to sexual offenses does not fully meet the requirements for achieving victim’s right to a fair trial.

Recognizing the specific and extremely sensitive character of this category of offenses, international treaties in this area suggest the establishment of additional safeguards for victims of sexual offenses. Among others, they advocate for the victim’s right to privacy, psychological, legal and medical assistance in the criminal process. The need to eliminate conditions that allow for the removal of criminal liability as a result of the victim’s reconciliation with the offender is being promoted.

Given the need to adjust the national legislation, it is important to capitalize on study’s recommendations on the compatibility analysis of national criminal legislation with internationally recognized standards.

# II.

INTERNATIONAL STANDARDS FOR  
COMBATING SEXUAL VIOLENCE  
AND SEXUAL ABUSE



Sexual violence and abuse are extremely serious violations of human rights, being recognized in the literature on international human rights instruments as invading the dignity and value of the individual. These actions violate person's physical and psychological integrity, as well as the right to sexual autonomy, which is an element of private life.

Sexual violence and sexual abuse are worldwide phenomena. Studies show that sexual violence is largely based on perpetrator's desire to exercise power and control, and most often the victim is the woman.

***In about 10% of the total number of women who suffered from sexual violence, the perpetrator made use of force. Sexual violence against women is in fact a severe form of gender-based violence, and a severe form of discrimination against women.***

In 1993, the UN General Assembly adopted the Declaration on the Elimination of All Forms of Violence Against Women, which laid the groundwork for international action on violence against women. In 2006, the UN Secretary-General presented an in-depth study on all forms of violence against women, in which he referred to the international legal framework on violence against women, also referring to "promising practices" that had some success in addressing this issue.

The international regulatory framework has been undergoing a process of development lately, including the requirements for prosecution in cases of violence and sexual abuse. At the same time, the atrocities found in some "hot zones", which required the involvement of international forces, have resurfaced the need to protect the person's sexual integrity in case of attacks on civilian populations or armed conflicts. Sexual violence constitutes, under such conditions, a war crime or a crime against humanity.

Republic of Moldova has become or is in the process of becoming party to a number of international treaties in the field. Here are three, most relevant ones in the context of this Report.

#### ◆ ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT<sup>13</sup>

The Statute of the International Criminal Court (ICC Statute) operates with several categories of offenses - genocide, crimes against humanity, war crimes, aggression crimes - and provides definitions based on human rights, including sexual offenses. In line with article 7 of the ICC

Statute, crimes against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack.

#### ***g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity***

The structure of article 7 is made out of 2 parts: the first part lists the facts which represent crimes against humanity and the second part of-

fers the definition of some of them. In reference to the scope of the study, par. (2) art. 7 offers the definition of the term "forced pregnancy":

*f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.*

According to art. 8 of the ICC Statute, ***rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in art. 7, paragraph 2, let. f):***

<sup>13</sup> The Rome Statute of the International Criminal Court, adopted on July 17, 1998. UN Doc. A / CONF. 183/9.

**f) forced sterilization** or any other form of sexual violence can be described as war crimes when they are part of a plan or policy or are part of a series of similarly committed crimes on a large scale in the case of other serious violations of applicable laws and customs:

- international armed conflicts;
- non-international armed conflicts;
- armed conflicts that oppose in the longer term, on the territory of a State, the authorities of that State and the armed groups or armed groups organized between them.

A special significance may be attributed to art. 9 of the ICC Statute, which provides for the development of crime elements,<sup>14</sup> stipulated also in art. art. 7, 8 of the Statute. The

crime elements, as an annex to the ICC Statute, provide the definition of several terms referring to sexual offenses.

**1. Rape**, which includes the following features:

- The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
- The invasion (action) was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

**2. Sexual slavery**, which includes the following features:

- The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.
- The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.

It is understood that such deprivation of liberty may, under certain circumstances, include excessive forced labor or the reduction of a person to a servile status. It is also understood

that the behavior described by this element includes trafficking in human beings, especially women and children.

<sup>14</sup> The elements of the offenses are reproduced from the official notes of the Assembly of State Parties to the Rome Statute of the International Criminal Court in the first ses-

sion. New York, 3-10 September 2002; available on: [icc-cpi.int/nr/rdonlyres/336923d8-a6ad-40ec-ad7b-45bf9de73d56/0/elementsofcrimeseng.pdf](http://icc-cpi.int/nr/rdonlyres/336923d8-a6ad-40ec-ad7b-45bf9de73d56/0/elementsofcrimeseng.pdf)

**3. Enforced prostitution, which includes the following features:**

- *The perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.*
- *The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with acts of a sexual nature.*

**4. Enforced sterilization, which includes the following features:**

- *The perpetrator deprived one or more persons of biological reproductive capacity.*
- *The conduct was neither justified by the medical or hospital treatment of the person or persons concerned nor carried out with their genuine consent.*

**5. Forced pregnancy, which includes the following features:**

- *The perpetrator confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.*

**6. Sexual violence, which includes the following features:**

- *The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature*
- *The act was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.*

The Republic of Moldova ratified the Rome Statute of the International Criminal Court through Law no. 212 of 09.09.2010 for ratification of the Rome Statute of the International Criminal Court<sup>15</sup>. In accordance with art. 1 of the ICC Statute, the jurisdiction of the Court is comple-

mentary to that of national courts of the States which have ratified the Statute. Ratification, however obliges the Republic of Moldova to adjust its criminal legislation to the provisions of the ICC Statute including in relation to sexual offenses.

<sup>15</sup> Law no. 212 of 09.09.2010 for ratification of the Rome Statute of the International Criminal Court. (Official Gazette of the Republic of Moldova, 2010, No. 190, Article 624)

♦ COUNCIL OF EUROPE CONVENTION ON PROTECTION OF CHILDREN  
AGAINST SEXUAL EXPLOITATION AND SEXUAL ABUSE  
(LANZAROTE CONVENTION)<sup>16</sup>

Various forms of child sexual abuse, including abuse by family, through the use of force, coercion or threats are identified as offences by the Lanzarote Convention. Certain types of behavior, such as the involvement of a child who has not reached legal age in sexual activity,

prostitution and child pornography are classified as offenses by the Convention. The new legal instrument also ensures the protection of children victims during court proceedings. The Convention criminalizes several harmful acts.

**Article 18. Sexual abuse**

1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:

a) engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;  
b) engaging in sexual activities with a child where:

- use is made of coercion, force or threats; or
- abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or
- abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

2. For the purpose of paragraph 1 above, each Party shall decide the age below which it is prohibited to engage in sexual activities with a child.

3. The provisions of paragraph 1. let. a are not intended to govern consensual sexual activities between minors.

**Article 19. Offenses concerning child prostitution**

1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:

a) recruiting a child into prostitution or causing a child to participate in prostitution;  
b) coercing a child into prostitution or gaining profit from or otherwise exploiting a child for such purposes;  
c) having recourse to child prostitution.

2. For the purpose of the present article, the term “child prostitution” shall mean the fact of using a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment, regardless if this payment, promise or consideration is made to the child or to a third person.

<sup>16</sup> The Lanzarote Convention, adopted on 25 October 2007; available on: [rm.coe.int/1680084822](http://rm.coe.int/1680084822)



### **Article 20. Offences concerning child pornography**

1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct, when committed without right, is criminalised:

- a) producing child pornography;
- b) offering or making available child pornography;
- c) distributing or transmitting child pornography;
- d) procuring child pornography for oneself or for another person;
- e) possessing child pornography;
- f) knowingly obtaining access, through information and communication technologies, to child pornography.

2. For the purpose of the present article, the term “child pornography” shall mean any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child’s sexual organs for primarily sexual purposes.

3. Each Party may reserve the right not to apply, in whole or in part, paragraph 1.a and e to the production and possession of pornographic material:

- consisting exclusively of simulated representations or realistic images of a non-existent child;
- involving children who have reached the age set in application of Article 18, paragraph 2, where these images are produced and possessed by them with their consent and solely for their own private use.

4. Each Party may reserve the right not to apply, in whole or in part, paragraph 1.f.

### **Article 21. Offences concerning the participation of a child in pornographic performances**

1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:

- a) recruiting a child into participating in pornographic performances or causing a child to participate in such performances;
- b) coercing a child into participating in pornographic performances or profiting from or otherwise exploiting a child for such purposes;
- c) knowingly attending pornographic performances involving the participation of children.

2. Each Party may reserve the right to limit the application of paragraph 1, let. c) to cases where children have been recruited or coerced in conformity with paragraph 1, let. a) or b).

### **Article 22. Corruption of children**

Each Party shall take the necessary legislative or other measures to criminalise the intentional causing, for sexual purposes, of a child who has not reached the age set in application of Article 18, paragraph 2, to witness sexual abuse or sexual activities, even without having to participate.

### **Article 23. Solicitation of children for sexual purposes**

*Each Party shall take the necessary legislative or other measures to criminalise the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18, paragraph 2, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a, against him or her, where this proposal has been followed by material acts leading to such a meeting.*

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse has been ratified by the Republic of Moldova through Law no. 263 of 19.12.2011.<sup>17</sup>The provisions of the Convention

are binding for the Republic of Moldova starting with 01.07.2012. Under Art. 2 of Law no. 263, the Government shall take the necessary measures for the national implementation of Convention's provisions.

### ◆ COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (ISTANBUL CONVENTION)<sup>18</sup>

The Convention on preventing and combating violence against women and domestic violence is the first legally binding document at the European level to prevent, investigate and punish acts of gender-based violence. By drawing up and adopting this Convention, the State Parties „...recognise, with grave concern, that women and girls are often exposed to a higher risk of gender-based violence than men..., including serious forms of violence such as domestic violence, sexual harassment, rape, forced marriage, and genital mutilation, which constitute a

serious violation of the human rights... recognizing at the same time that men may also be victims of domestic violence. The objectives of the Convention are to “design a comprehensive framework, policies and measures for the protection and assistance of all victims of violence ...”. Parties to the Convention are encouraged to apply this Convention to all victims of violence, in peacetime and in situations of armed conflict. The Istanbul Convention calls on parties to take legislative action to ensure that several harmful acts are criminalized.

### **Article 36. Sexual violence, including rape**

**(1)** *Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:*

<sup>17</sup> Law no. 263 of 19.12.2011 on the ratification of the Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse. (Official Gazette of the Republic of Moldova, 2012, No. 21-24, article 56)

<sup>18</sup> Istanbul Convention, adopted on May 11, 2011; available at: [coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168008482e](http://coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168008482e)

- a) engaging in nonconsensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;
- b) engaging in other nonconsensual acts of a sexual nature with a person;
- c) causing another person to engage in nonconsensual acts of a sexual nature with a third person.

**(2)** Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.

**(3)** Parties shall take the necessary legislative or other measures to ensure that the provisions of paragraph 1 also apply to acts committed against former or current spouses or partners as recognised by internal law.

#### **Article 37. Forced marriage**

**(1)** Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised.

**(2)** Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage is criminalised.

#### **Article 38. Female genital mutilation**

Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

- a) excising, infibulating or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris;
- b) coercing or procuring a woman to undergo any of the acts listed in point a);
- c) inciting, coercing or procuring a girl to undergo any of the acts listed in point a).

#### **Article 39. Forced abortion and forced sterilization**

Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

- a) performing an abortion on a woman without her prior and informed consent;
- b) performing surgery which has the purpose or effect of terminating a woman's capacity to naturally reproduce without her prior and informed consent or understanding of the procedure.

#### **Article 40. Sexual harassment**

Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.

Open for signature from the date of adoption at the 121 Session of the Committee of Ministers, the Istanbul Convention entered into force on 1 August 2014. In line with the Decree of the President of the Republic of Moldova no. 2511-VII of 15 December 2016 on the approval of the signing of the Council of Europe Convention on preventing and combating violence against women and domestic violence, on 6 February 2017 the Permanent Representative of the Republic of Moldova to the Council of Europe signed the Istanbul Convention. The signing procedure, according to art. 2 of the Law no. 595-XIV of 24.09.1999 on international treaties of the Republic of Moldova established the act of authentication of the text of the international treaty, which will be followed by the

commitment of the Republic of Moldova to be party to this treaty upon ratification. The Convention will be brought into domestic law by the ratification procedure, as provided by Art. 11 of Law no. 595. In the meantime, in view of this already initiated process, it is necessary to adjust the relevant national legislative framework to the requirements of the Istanbul Convention according to the spirit of art. 4, 8 of the Constitution of the Republic of Moldova.

In order to determine the need to adjust the national legislation further below is an analysis of the compatibility of domestic criminal legislation regarding sexual offenses with the internationally recognized standards of international treaties mentioned in this section.

# III.

ANALYSIS OF THE COMPATIBILITY  
OF NATIONAL CRIMINAL LEGISLATION  
WITH INTERNATIONAL STANDARDS  
IN THE AREA OF COMBATING SEXUAL  
VIOLENCE AND SEXUAL ABUSE



**State has the positive obligation to give at all times the required attention to the issue of modernizing the legal framework and ensure the**

**implementation at the national level of international standards in the area of promoting and protecting human rights.**

## III.I. DEFINITIONS OF SEXUAL VIOLENCE ACCORDING TO THE STATUTE OF INTERNATIONAL CRIMINAL COURT

The Statute of the ICC defines **rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity**, as

- *crimes against humanity*, when committed as part of a widespread or systematic attack directed against any civilian population
- as *war crimes* in the case of an armed conflict not of an international character, including, under these circumstances, against one or more persons protected by international humanitarian law.

At the same time, as stated above, under art. 1 of the Statute of the ICC, which establishes the complementary nature of the jurisdiction of the Court over that of the national courts of the states that have ratified the Statute, the Republic of Moldova has the obligation to adjust its criminal law in strict accordance with the spirit and norms of the ICC Statute. In this respect, the Republic of Moldova adopted Law no. 64 of 04.04.2013 to amend and supplement the Criminal Code, which included criminalization of sexual acts in two articles (Special Part, Chapter I. Offenses against human rights and peace, war crimes).

### **Article 135<sup>1</sup>. Offences against humanity**

**(1)** *The commission, in a generalized or systematic attack launched against a civil population aware of such attack, of one of the following acts:*

- a) subjecting to slavery or human trafficking;*
- e) rape, sexual exploitation, coercion to prostitution, illegal detention of a woman impregnated in a forced way, for the purpose of altering the ethnic composition of a population, forced sterilization or any other form of sexual violence;**

### **Article 137. War crimes against individuals**

**(3)** *The commission, in an armed conflict with or without international nature, against one or more persons protected by the humanitarian international law of one of the following acts:*

- c) rape, sexual exploitation, coercion to prostitution, illegal detention of a woman impregnated in a forced way, to the purpose of altering the ethnic composition of a population, forced sterilization or any other violent sexual act;**

In general, the national legislation includes the provisions of the Rome Statute. It remains to be seen whether any adjustments to these criminal norms are necessary in order to ensure their full compliance with the spirit and the text of the international treaty.

- ♦ *The ICC Statute and the Criminal Code of the Republic of Moldova place Rape on top of the list of sexual offenses. Thus, there is a full coincidence of the understanding at both international and national level that rape is the most serious offense among those of a sexual nature that, in most cases, causes the victim extremely serious physical injury and / or psychological trauma, resulting in durable neuropsychiatric disturbances over time. At the same time, it is noted that the legal acts mentioned (national and international) reveal a noticeable difference in relation to the content (substance) of this term.*

The elements of the ICC Statute assign the following features to Rape: the perpetrator assaults the body of another person by committing the action of penetration of any part of the body of the victim with the sexual organ, or commits an anal or genital penetration of the victim with any object or any other part of the body. Thus, Rape, as per the ICC Statute, **is the act of penetrating any part of the victim's body with the sexual organ as well as the anal or genital penetration of the victim with any object or with any other part of the body.**

We consider it relevant here to point out that, similarly to the ICC Statute, Rape is also defined in the Convention on preventing and combating violence against women and domestic violence as engaging in nonconsensual vaginal, anal or oral sexual penetration of the body of another person with any physical part or object. **Consent must be given voluntarily as a result of the person's free will.**

The national criminal legislation considers Rape as the nonconsensual sexual act only. The crim-

inal doctrine<sup>19</sup>, which helps understand and univocally apply criminal provisions, explains the sexual intercourse as a physiological act of combining the genital organs of the two sexes. According to the doctrine, **in case of rape provided by the Criminal Code, there is a normal sexual intercourse (physiologically), which involves the insertion of the virile organ into the vagina or vestibule of the vagina, thus creating conditions for conception.** According to this hypothesis, the victim has to be of a different sexual identity than the perpetrator. Any other acts or sexual contacts cannot be covered by the term "sexual intercourse", this distinction is important for the delimitation of rape from other sexual offenses.

At the same time, it has been found that, in general terms, there is a unity of visions regarding ways of disregarding the will of the victim by defeating the resistance or taking advantage of unfavorable conditions in which the victim finds itself: physical coercion, psychological coercion and profiting from a coercive environment or the person's inability to express free consent. However, **the international act includes using these actions against another person as a means of coercion** in order to achieve the criminal purpose. The national criminal doctrine does not refer to such a variety of coercive actions of the victim, in this way there is a narrower interpretation of ways of disregarding the will of the victim of rape at the national level. Consequently, there is a legal definition of Rape, which is both wide in the international act, and narrow in national criminal law. Removing these discrepancies in the national criminal law is mandatory for the Republic of Moldova, under its status as a party to this international treaty.

**Conclusion.** The inclusion of Rape in the norms defining crimes against humanity and war crimes in the Criminal Code of the Republic of Moldova is in line with the requirements of the ICC Statute. At the same time, it is necessary to include elements specified in international treaties mentioned in the definition of Rape in the national criminal law. The achievement of this goal requires revision of the norm of Article 171 of the Criminal Code of the Republic of Moldova.

<sup>19</sup> Sergiu Brânză, Xenofon Ulianovschi, Vitalie Stati, Ion Țurcanu, Vladimir Grosu. Criminal law. Special part. Edition II, 2005.



## ♦ SEXUAL SLAVERY

The ICC Statute includes Sexual Slavery in the list of crimes against humanity and war crimes. The elements of the ICC Statute identify sexual slavery according to the following features: the exercise of ownership rights with regard to one or more persons, such as buying, selling, borrowing, or imposing a similar deprivation of liberty; the determination of the person or persons to engage in one or more acts of sexual nature. It also specifies that such deprivation of liberty may include excessive forced labor or reducing a person to a servile status as defined in the Additional Convention on the abolition of slavery, slave trade and institutions and slavery-like practices of 1956.<sup>20</sup> This behavior also includes trafficking in human beings.

According to provisions of the ICC Statute, sexual slavery includes:

- Illegal takeover, purchasing selling, promising, or disposal for money or inheritance, deprivation in any other way of liberty of the person for the purpose of having to engage in one or more acts of a sexual nature;

- Reducing the person to the status of slave for personal sex benefits

So, generally, it is about the same commercial or non-commercial sexual exploitation, as explained by the national doctrine. The difference is that sexual slavery does not include forced prostitution, for which the element of deprivation of freedom of movement is not necessarily mandatory. However, it is logical that terms such as sexual slavery and forced prostitution are found in the international norm. By adopting the amendments and supplements to the Criminal Code, through Law no. 64 of 04.04.2013, the national legislature decided not to take over the term „sexual slavery” from the original text of the ICC Statute on the grounds that it would not have a clear meaning in the context of national legislation, but rather replace it with the word sexual exploitation.

It is worth mentioning that national criminal legislation also lacks a definition of the term sexual exploitation. This term is only found in art. 165 of the Criminal Code (Trafficking in Persons):

*„Recruitment, transportation, transfer, harbouring or reception of a person, with or without its consent, for the purpose of commercial or non-commercial sexual exploitation ...”, as well as in art. 206 of the Criminal Code (Child trafficking): „Recruiting, transporting, transferring, harbouring or receiving a child, as well as giving or receiving payments or benefits in order to obtain the consent of a person who has control over the child, for the purpose of:*  
*a) sexual, commercial and non-commercial exploitation, in prostitution or in the pornographic industry ... „*

<sup>20</sup> This Convention, adopted on 7 September 1956, lists in Art. 1 practices analogous to slavery, which attribute the person the status of a slave, including:  
 (a) debt service, that is, the state or condition resulting from the fact that a debtor has undertaken to provide his personal services or that of another person over whom he has authority as security for a debt, if the fair value of those services does not affect the liquidation of the debt; or whether the duration of these services is not limited or their character defined;  
 b) serfdom, that is, the condition of a person who is bound by law, habit or agreement to live and work on a land belonging

to another person, providing certain determined, paid or free services without the possibility of changing his condition ...;  
 (c) any practice by virtue of which a woman is promised in marriage without having the right to refuse in return for compensation in cash or in kind, or is surrendered to a person for consideration or otherwise, or may be transmitted by succession;  
 d) any practice by virtue of which a child is given to another person, for a sum of money or not, for the exploitation by that person.

Therefore, neither in criminal legislation, nor in art. 165 of the Criminal Code there is no clear semantics regarding commercial or non-commercial sexual exploitation. In art. 206 of the Criminal Code this term is used as an alternative to child prostitution and pornographic industry (one of the varieties of exploiting the victim of trafficking).

The same is also contained in paragraph 2 of the Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova „On the practice of applying the law in cases of trafficking in human beings and trafficking of children”, no. 37 of 22.11.2004<sup>21</sup>, with amendments and supplements. While referring to the subjective side of the criminal norm on trafficking in human beings (Criminal Law, Special Part, p. 144 ) in amended p. 4.1 of the SCJ Plenum Decision no. 37/2004 and in the national criminal doctrine, the following definitions are given:

- Sexual exploitation means the person is forced to practice prostitution or other sexual acts;

- commercial sexual exploitation means profitable activity which results in the increase of the assets of the perpetrator or other persons, which are rendered in the use of the victim through coercion in prostitution or in pornographic industry;
- Non-commercial sexual exploitation means the activity that has no direct impact on the size of the perpetrator’s asset or other persons, expressed in marriage (including polygamy), concubinage or other similar forms of cohabitation made for the perpetrator’s own consumption.

Therefore, sexual exploitation, according to the doctrine, includes coercive actions into prostitution or pornographic industry or for the perpetrator’s own consumption.

Characteristic elements of the concept of non-commercial sexual exploitation are also found in the criminal norm, respectively, in the doctrine referring to art. 167 of the Criminal Code (Slavery and conditions similar to slavery):

*„... the perpetrator is criminalized with the harmful action, which is materialized in any of the following three actions:*

- a) placing a person in conditions in which another person exercises control over it;*
- (b) holding a person in circumstances where another person exercises control over it;*
- c) determining a person by using deception, coercion, violence or threat of violence, to engage in or remain in a relationship of concubinage or marriage. Concerning the third alternative action, it is necessary to mention that, according to the provisions of the Additional Convention on the Abolition of Slavery, Slaves Trade and Institutions and Practices Similar to Slavery, any institution or practice due to which:*
  - 1) a woman without having the right to refuse, is promised or given in marriage in return for compensation, in cash or in kind, paid to her parents, guardian, family or any other person or group of persons;*
  - 2) a woman’s husband, family or clan has the right to cede her to a third party for payment or otherwise;*
  - 3) upon the death of her husband, the woman may be transferred by succession to another person ... „*

<sup>21</sup> Published in the Bulletin of the Supreme Court of Justice of the Republic of Moldova, 2005, no. 8, p. 4; amended by the Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova, no. 9 of 22.12.2008 and the Decision of the Plenum of the Supreme Court of Justice of

the Republic of Moldova no. 13 of 22.12.2014

<sup>22</sup> Law no. 241-XVI of 20.10.2005 on preventing and combating trafficking in human beings. (Official Gazette of the Republic of Moldova, 2005, No. 164-167, article 812)

Law on preventing and combating human trafficking nr. 241 –XVI as of 20.10.2005<sup>22</sup> includes the following term in art. 2:

*3) exploitation of the person - abuse of the person in order to obtain a profit, namely:  
c) to enforce prostitution, participation in pornographic representations for the production, dissemination and circulation thereof by any means, acquisition, sale or possession of pornographic material, the practice of other forms of sexual exploitation.*

Some features of sexual exploitation of the person can be derived from this definition, namely:

- Forcing to perform prostitution (the same forced prostitution – n.n.);
- the obligation to participate in pornographic representations;
- the obligation to participate in the production of pornographic materials;

- Exposing the person to other forms of sexual exploitation.

At the same time, the Law on Preventing and Combating Trafficking in Human Beings (Article 2), as well as the SCJ Plenum Decision no. 37/2004 at point 4.3, also includes the notions:

*8) slavery - status or condition of the person to whom one or more rights deriving from the right to property is exercised;*

*9) practices similar to slavery - the status of the person being held or put into a situation where another person has control over it or by imposing through deception, force, violence or by other means of coercion, to provide certain services, including to engage or remain in a relationship of concubinage or marriage. The phrase to perform certain services here has a rather large meaning, which also allows the qualification of sexual services.*

From the above mentioned it results that:

- Unless the term “sexual slavery” was kept, the term “sexual exploitation” from the national legislation would not provide greater clarity for the qualification of facts;
- the term Sexual slavery in the sense of the ICC Statute does not include forced prostitution; therefore forced prostitution is a distinct crime from sexual slavery in the relevant norms of the ICC Statute;
- national legislation and criminal doctrine include the elements of forcing to practice prostitution (coercing into prostitution) in the definition of sexual exploitation. Therefore, the version chosen by the domestic legislator

when adopting Law no. 64/2013 to substitute the term sexual slavery with the term sexual exploitation and maintain the provision related to coercing into prostitution is essentially a legislative tautology (coercing into prostitution falls within the term of sexual exploitation).

**Conclusion.** Starting from the idea that criminal norms (Article 135<sup>1</sup> CC and Article 137 CC) are applicable in specific (extraordinary) situations - attacks against civilian population, armed conflicts with or without an international nature, which often involves isolation and servitude of victims - we consider that it is more rational to take over the original term sexual slavery from the Charter of ICC into the national criminal law (in the above mentioned norms),

as it is more appropriate for situations in which the norms of art. 135<sup>1</sup> and Art. 137 of the CC are applied. At the same time, one would favor taking over in the national criminal norm of the original term sexual slavery since this term has a broader meaning than the term sexual exploitation. The notion of sexual slavery in the ICC Statute expressly mentions: "... the behavior described in this element includes trafficking in human beings." Thus, we consider that by substituting with the term sexual exploitation (which is only a variety of trafficking in human beings), the national legislator diminished the scope of art. 135<sup>1</sup> and art. 137 CC in relation to provisions of mentioned international treaty. At the same time, it would be appropriate to include the definition of sexual slavery in the Criminal Code, which would be according to international norms and highlights the specific circumstances (specific situations) for

the application of the norm. If one continues to insist on keeping the term sexual exploitation in the respective criminal norms, it is still necessary to include the definition of this term in the Criminal Code in order to give clarity for the application, and exclude the term coercion to prostitution, which falls within the term of sexual exploitation from the current version of the criminal norms (Article 135<sup>1</sup> and Article 137 of the CC).

In other respects, it is necessary to analyze whether the norm of art. 167 from the Criminal Code is applicable in cases specified in Art. 37 of the **Council of Europe Convention on preventing and combating violence against women and domestic violence**, which requires the criminalization of forced marriage. According to the Istanbul Convention, the phenomenon of forced marriage calls for measures to be criminalized by State Parties.

#### **Article 37. Forced marriage**

*(1) Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised.*

*(2) Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage is criminalised.*

The following can be derived from this norm:

- the need to criminalize the behaviour of forcing an adult or child to marry;
- the need to criminalize the intentional conduct of luring an adult or child to the territory of a state other than that of the victim in order to force her to marry.

According to the Explanatory Report to the Istanbul Convention, while some victims of forced marriage are forced to marry in the country where they reside, others are first moved to another country, often the one of their ancestors and being forced to marry with a resident in that country. The term "forced" means

the application of physical and psychological force in case of coercion or pressure. The term "luring" refers to any action by which the perpetrator lures the victim to travel to another country, for example to visit a family member who is ill. The offense is completed when a marriage is concluded where at least one of parties has not given the consent voluntarily. These facts must be regulated by criminal law, taking into account international standards. We consider that the norm provided in the Istanbul Convention is partly found in art. 167 of the Criminal Code of the Republic of Moldova.

### **Article 167. Slavery and conditions similar to slavery**

*Putting or holding a person in circumstances where another person exercises control over or determines by using deception, constraint, violence or threat of violence to engage or remain in a relationship of cohabitation or marriage...*

This offense is assigned to the category of offenses that are invading the freedom of the person. The objective side of the offense also includes determining a person by using deception, coercion, violence or threat of violence, engaging in or remaining in a relationship of concubinage or marriage.

The Doctrine related to art. 167 of the Criminal Code indicates as one of three alternative harmful actions that form the objective aspect of this act: the determination of a person, through the use of deception, coercion, violence or threat of violence to engage in or remain in a relationship of concubinage or marriage. By the way, the fact that the name of this criminal norm is **Slavery and conditions similar to slavery** is irrelevant in the context under discussion since the doctrine<sup>23</sup> also points out that the name of a norm does not apply to the process of qualifying the fact provided by that norm. The purpose of the name is to facilitate the work of identifying the necessary norm.

The methods for determining the victim to marry indicated in the provision of this article, confirm that victims of this offense may be persons without slave status, otherwise the

need to resort to methods of forced marriage is irrelevant.

As already mentioned, the provision of art. 167 of the Criminal Code provides for deception as one of the methods used by the perpetrator to determine a person to engage in marriage or concubinage. Luring for the purpose of concluding a forced marriage could be interpreted as a form of trafficking in human beings for the purpose of non-commercial sexual exploitation. At least, such an approach exists internationally, but this is also the result of the SCJ Plenum Decision no. 37/2004.

It is worth mentioning that according to DEX (Explanatory Dictionary of Romanian language), the term deception means luring, deception, cheating, deceit, fooling ... Therefore, the provision of art. 167 of the Criminal Code contains all elements of art. 37 of the Istanbul Convention.

**Conclusion.** The provision of art. 167 of the Criminal Code of the Republic of Moldova is applicable to cases of forcing or luring a person, an adult or a child to conclude a marriage as provided by art. 37 of the Istanbul Convention.

## ♦ FORCED PROSTITUTION

The ICC Statute includes forced prostitution on the list of crimes against humanity and war crimes. The elements of the ICC Statute identify Forced prostitution according to the following features: the perpetrator has caused one or more persons to engage in one or more sexual acts by force or by threat of force or by coercion, such as the one caused by threat of violence, imprisonment, psychological oppression,

or abuse of power, against such a person or other person, or taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving a genuine consent; the perpetrator or other person has obtained or expected to obtain money or other benefits in exchange for or in connection with sexual acts.

<sup>23</sup> Sergiu Brânză, Xenophon Ulianovschi, Vitalie Stati, Ion Țurcanu, Vladimir Grosu. Criminal law. The special part. Second Edition, 2005, p.89.

By adopting amendments and supplements to the Criminal Code through Law no. 64 of 04.04.2013, the national legislator has decided to replace the term forced prostitution from the original text of the ICC Statute with the term coercion to prostitution. Previously, we referred to the correlation between the notions of sexual exploitation and coercion to prostitution in the text of criminal norms (Article 135<sup>1</sup> and Article 137 CC) and we concluded that under the terms of national legislation and doctrinal understanding of sexual exploitation, they include as well the facts resulting from the meaning of the norms of the ICC Statute, in the part concerning forced prostitution. Therefore, we believe that continued use of the term sexual exploitation in the relevant provisions of criminal law requires the exclusion of term coercing to prostitution.

In the event of substituting the notions of sexual exploitation and sexual slavery in the text of the criminal law, it will be necessary to supplement the Criminal Code with a definition of the term coercion to prostitution. At present, the criminal doctrine recognizes the coercion to prostitution as a derivative of commercial

sexual exploitation of the person and as a consequence, a component of trafficking in human beings. At the same time, art. 135<sup>1</sup>, par. (1), let. a) CC recognizes trafficking in human beings as a distinct crime, along with coercion to prostitution, provided in the same paragraph at let. c).

**Conclusion.** The substitution in the criminal norms (Article 135<sup>1</sup> and Article 137 CC) of the term forced prostitution from the original text of the ICC Statute with the phrase “coercion to prostitution” does not substantially affect the state of affairs, except that we face a legislative tautology (coercion to prostitution falls within the term of sexual exploitation). In the event of the substitution of terms of sexual exploitation and sexual slavery in the text of the criminal law, it would be important to supplement the Criminal Code with the definition of the term coercion to prostitution, which would essentially result from elements of trafficking in human beings and child trafficking. But in this case too it will be necessary to exclude the term coercion to prostitution from the text of art. 135<sup>1</sup>, par. (1), let. c) CC, given the presence of trafficking in human beings as a distinct crime in the same paragraph at let. a).

#### ◆ FORCED PREGNANCY

The ICC Statute includes Forced pregnancy in the list of crimes against humanity and war crimes. Thus, according to par. (1), art. 7 of the ICC Statute, forced pregnancy is recognized as

a crime against humanity. Par. (2), art. 7 of the ICC Statute provides for the definition of the term forced pregnancy:

*f) forced pregnancy means the illegal detention of a pregnant woman with the intention of altering the ethnic composition of a population or of committing other serious violations of international law. According to art. 8 of the ICC Statute “... forced pregnancy, as defined in art. 7, para 2, lit. f) ... “ is considered a war crime.*

Amendments and additions to the Criminal Code, operated by Law no. 64 of 04.04.2013, ensured the inclusion of this term in the following wording in the national criminal law: the illegal detention of a woman who was forced to become pregnant in order to change the ethnic composition of a population. Thus, this international standard has been transposed into national law, keeping the letter and spirit of the ICC Statute.

**Conclusion.** This analyzed phrase is welcome when it comes to norms defining crimes against humanity and war crimes in the Criminal Code of the Republic of Moldova and is in line with the requirements of the ICC Statute. No legislative amendments are considered necessary in this regard.

### ♦ FORCED STERILIZATION

The ICC Statute defines Forced sterilization as one of the crimes against humanity and war crimes. The elements identify forced sterilization according to the following features: the perpetrator has deprived one or more persons of biological reproductive capacity; it was not justified neither by the medical treatment or hospitalization of the person or persons concerned in the hospital nor was it performed in line with their genuine consent.

The following actions can be derived from this definition with consequences resulting in punishment:

- sterilization has the consequence of depriving the victim of biological reproductive capacity;
- sterilization is done by any person and by any method;
- sterilization is carried out on one or more persons;
- sterilization is carried out both in and out of the medical institution;
- sterilization is carried out without the informed consent of the victim;
- sterilization is not the result of the need for treatment of the victim.

Amendments and additions to the Criminal Code, operated by Law no. 64 of 04.04.2013, ensured the inclusion in the national criminal law of this term, keeping the letter and the spirit of the norm of the ICC Statute, which excludes the need of subsequent operation of amendments to the provisions of criminal

norms of art. 135<sup>1</sup> CC and art. 137 CC. At the same time, it should be noted that rules of Art. 135<sup>1</sup> CC and Art. 137 CC, which define forced sterilization as a crime, do not describe its features in the provision of the criminal norm. In connection with this the reference to the Law on Health Protection no. 411-XIII of 28.03.1995<sup>24</sup> is relevant. It provides that surgical sterilization in women and men may be performed at their request or at the indication of the physician with the written consent of the person, in public and private medical institutions, in cases and manner established by the Ministry of Health, Labor and Social Protection. Performing surgical sterilization by persons without adequate medical education, as well as in non-specialized medical institutions, is punishable in accordance with the law.

Also, in accordance with Law no. 185-XV of 24.05.2001 on the protection of reproductive health and family planning,<sup>25</sup> everyone is entitled to use contraceptive methods and refuse to use them. The person is given counseling assistance in choosing the contraceptive method, taking into account the state of health, age and individual peculiarities. The contraceptive surgical method is based on informed consent. The method of application of the contraceptive surgical method is laid down in a regulation approved by the Ministry of Health, Labor and Social Protection.

In situations of breach of established protocols, the Criminal Code of the Republic of Moldova contains a norm that criminalizes illegal sterilization of the person.

#### **Article 160. Illegal surgical sterilization**

**(1)** *The illegal surgical sterilization by a physician is punishable by a fine of up to 550 conventional units with (or without) the deprivation of the right to hold certain positions or exercise a specific activity for up to 3 years.*

**(2)** *The same action committed:*

*a) in non-specialized medical units;*

*b) by a person without special higher medical studies is punishable by a fine*

<sup>24</sup> Health Protection Law no. 411-XIII of 28.03.1995, art. 31. (Official Gazette of the Republic of Moldova, 1995, No. 34, article 373)

<sup>25</sup> Law no. 185-XV of 24.05.2001 on the protection of reproductive health and family planning, art. 11. (Official Gazette of the Republic of Moldova, 2001, no.90-91, article 697)

*from 550 to 850 conventional units or by imprisonment up to 3 years, in both cases with (or without) the deprivation of the right to hold certain positions or exercise a specific activity for a period of up to 5 years.*

**(3)** *The actions provided at par. (1) or (2), which:*

*b) caused by imprudence a prolonged health disorder or a serious injury to bodily integrity or health;*

*c) caused by imprudence the death of the patient, are punishable by imprisonment from 3 to 6 years with (or without) the deprivation of the right to hold certain positions or exercise a specific activity for up to 5 years.*

According to the criminal doctrine, ensuring the reproductive freedom of the person presupposes that the voluntary surgical sterilization of women and men can be done at their wish or at the doctor's indication with the written consent of the person, in the cases and in the manner established by the competent ministry. By surgical sterilization one should understand influencing the body of the person through surgical intervention, aimed at making him/her lose the reproductive capacity while preserving the sexual potency. Surgical sterilization is performed for contraception or prophylaxis purposes, treatment of urogenital diseases. Only sterilization by a surgical method falls within the scope of this criminal norm. If sterilization has been accomplished by other methods (eg, irradiation), the fact is to be qualified according to the severity of injury to bodily integrity or health. Illegal castration resulting in inherent loss of reproductive organs is classified as a serious injury to bodily integrity or health.

For surgical sterilization to become criminally liable under art. 160 CC, it must be illegal, that is, it should be done otherwise than in the cases and manner established by the central specialized authority (contrary to the medical protocols established in this respect, in the presence of medical contraindications, etc.). Surgical sterilization is performed although illegally but with the consent of the victim. In the absence of victim's consent or committed by coercion, the act of sterilization of a person is to be qualified according to the severity of injury to bodily integrity or health.

**Combating forced sterilization** is also enshrined in a norm of the **Convention on preventing and combating violence against women and domestic violence**<sup>26</sup>, which indicate the need to criminalize the act of performing surgery which has the purpose or effect of terminating a woman's capacity to naturally reproduce without her prior and informed consent or understanding of the procedure.

**Conclusion.** Inclusion of the phrase Forced sterilization in norms defining crimes against humanity and war crimes in the Criminal Code of the Republic of Moldova is in line with the requirements of the ICC Statute. The national legislative framework, including the criminal law, recognize the harmful character of the components of the definition of forced sterilization, as it results from the notion specified in the elements of the ICC Statute and the Convention on preventing and combating violence against women and domestic violence. The special norm contained in Art. 160 of the Criminal Code provides for liability for illegal sterilization actions carried out with the consent of the victim. Acts of sterilization without the consent of the victim, as directed by the doctrine, are to be classified as serious or average injury, depending on the severity of injury to bodily integrity or health. Therefore, although there is no separate criminal norm regarding the sterilization of a person carried out by coercion or without consent, these facts are anyhow subject to criminal liability, as appropriate under art. 151 or art. 152 of the Criminal Code of the Republic of Moldova.

<sup>26</sup> See, Istanbul Convention, art. 39



## FORCED ABORTION

The same norm of the **Convention on preventing and combating violence against women and domestic violence**<sup>27</sup> is related to forced abortion.

### **Article 39. Forced abortion and forced sterilisation**

*Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalized:*

*a) performing an abortion on a woman without her prior and informed consent...;*

This norm draws attention to the social danger of intentionally interrupting the pregnancy without the prior and informed consent of the victim. Termination of pregnancy includes

any of the various processes that result in the expulsion of the product of conception. At the same time, the norm of the Convention

*“... is not intended to criminalize any medical interventions or surgical procedures performed, for example, to help a woman save her life, or to help a woman with no discernment. The purpose of this provision is rather to emphasize the importance of respecting the reproductive rights of women ...”<sup>28</sup>*

The Criminal Code of the Republic of Moldova criminalizes the acts of “illegal induction” of abortion in article 159 with the following wording:

### **Article 159. Illegal induction of abortion**

**(1)** *The termination of pregnancy by any means committed:*

- a) outside medical institutions or medical offices authorized to this purpose;*
- b) by a person without special higher medical studies;*
- c) in the case of pregnancy that exceeds 12 weeks, in the absence of medical indications, established by the Ministry of Health;*
- d) in the case of medical contraindications for such surgery;*
- e) in unsanitary conditions is punishable by a fine from 550 to 850 conven-*

<sup>27</sup> Ibidem.

<sup>28</sup> Explanatory Report to the Convention on preventing and

combating violence against women and domestic violence, page 30

*tional units or by the deprivation of the right to hold certain positions or exercise a specific activity for up to 3 years or by imprisonment for up to 2 years.*

**(2) The same action:**

*b) which caused by imprudence a serious or average injury to bodily integrity or health;*

*c) which caused by imprudence the death of the victim; is punishable by imprisonment from 1 to 6 years with (or without) the deprivation of the right to hold certain positions or exercise a specific activity for up to 5 years.*

According to the doctrine, termination of pregnancy means expelling or suppressing the product of conception when it is non viable (in the first 22-28 weeks of pregnancy), or suppressing the product of the conception when it is viable (in the final stage of pregnancy). In the context of the offense provided for in art. 159 CC one should consider the termination of pregnancy only with the consent of the pregnant woman. If she has not given her consent to abortion, the offenses committed must be qualified according to Art. 151 of the Criminal Code of the Republic of Moldova.<sup>29</sup>

We cannot fully endorse this position for the following reasons. Through Order of the Ministry of Health no. 647 of September 21, 2010 the Regulation on voluntary termination of pregnancy was approved.<sup>30</sup> According to the Regulation, the voluntary termination of pregnancy after the first 12 weeks and until the end of the 21st week of pregnancy is performed only in public health care institutions, *following medical indications* (fetal malformations that are incompatible with life/incurable with the removal of an important vital organ, diseases or pathological conditions endangering health and life of the pregnant woman) *and social* (the age of the pregnant woman under 18 years and over 40 years, pregnancy that resulted from rape, incest or trafficking in human beings, divorce during pregnancy, death of the spouse during pregnancy, deprivation of freedom or parental rights of one or both spouses, pregnant women in the process of migration, pregnant women with 5 or more children, pregnant women who have a child in their care who is less than

2 years and one or more family member with degree 1 disability, the association of at least 2 circumstances - lack of housing, lack of financial sources for existence, alcohol and / or drug abuse, domestic violence, vagabondage, etc.).

Despite the fact that the term “voluntary termination of pregnancy” is used in the title and in the contents of the Regulation, the medical record for the performance of voluntary termination of pregnancy (Form No. 003-3 / e), which is annex no. 2 to the Order of the Ministry of Health, contains a part in the section “Gynecological Anamnesis” in which the reasons for the termination of pregnancy must be specified. (Reasons for the termination of current pregnancy (to be specified): upon request, upon medical advice, social medical indications). Thus, according to the text from the medical file, the willingness (consent) of the pregnant woman is presented as an alternative to the medical indication or social indication. This approach can be a prerequisite for the danger of terminating the pregnancy without a conscious consent of the women, especially in the case of women in the process of migration, women deprived of their liberty, homeless women and lacking sources for existence, abuse alcohol / drugs etc.

From this perspective, it is relevant to analyze the content of art. 159 of the Criminal Code of the Republic of Moldova. The provision of the criminal norm does not stipulate “voluntary or consensual termination”, but only “termination of pregnancy”. Thus, *stricto sensu*, from the point of view of the qualification of the act under art. 159 CC, the termination of pregnancy

<sup>29</sup> Criminal Law. Special Part. Edition II 2015, page. 123.

<sup>30</sup> Order of the Ministry of Health no. 647 of 21.09.2010 on carrying out the voluntary termination of pregnancy in safe

conditions. (Official Gazette of the Republic of Moldova, 2010, no. 241-246, article 948)

shall have no relevance, although nonconsensual but respecting all the requirements (in the absence of conditions specified in paragraph (1), let. a) - e) or par. (2), let. b) - c).

For example, we will clarify the fact specified in art. 159, par. (1), let. c) CC: Termination of pregnancy by any means committed in case of pregnancy exceeding 12 weeks, in the absence of medical indications, provided by the Ministry of Health, Labor and Social Protection. It means that there will be elements of the offense present if the act of termination of pregnancy has occurred in the absence of medical indications. On the contrary, it will not be considered a harmful act, provided by art. 159 CC if the action of termination of pregnancy was done without the consent of the woman, but the medical indications were present. The Istanbul Convention focuses on woman's prior informed consent in the event of a pregnancy termination. The norm of art. 159 CC, which is a special criminal law in this respect, does not provide any guarantee in this regard and coercive measures for cases of termination of pregnancy without the prior informed consent of the woman. Whilst it seems that under the current legislation, abortion is not possible without the prior and informed consent of the woman, however such a situation can not be ruled out.

Coming back to the doctrine regarding the offense provided by art. 159 CC, we find that the criminal norm is only applicable in case of pregnancy termination with the consent of the pregnant woman. If the woman has not given her consent to abortion, the offenses committed must be qualified according to Art. 151 CC because the Regulation on the forensic assessment of the severity of personal injury, no.199 of 27.06.2003, as amended and supplemented,<sup>31</sup> establishes in point 60 that termination of pregnancy is part of serious bodily injury. Concurrently, the doctrine specifies in art. 151 CC that abortion without the consent of the victim is to be classified as serious injury to the bodily integrity or health of the person. However, the same doctrine (Article 151 of the Criminal Code) stipulates that intentional harm

to bodily integrity or health is the detrimental act that can be materialized in action (striking, stabbing, poisoning, throwing corrosive substances, transmitting a contagious disease, etc.) or inaction, having as reason revenge, jealousy, envy, hatred, etc. It should also be noted that according to the same paragraph 60 of Regulation no. 199, termination of pregnancy refers to serious injury to bodily integrity or health if there is a direct causal link with the trauma. At the same time, point 26 of the Regulation indicates serious injury to bodily integrity or health as a product of post-traumatic termination of pregnancy.

It results from the above that in case of a fact qualified under art. 151 CC, termination of pregnancy is not the intent of the perpetrator, but the consequences of his deliberate intentional harm to bodily integrity or health through acts of striking, stabbing, poisoning, throwing corrosive substances, transmitting a contagious disease, etc. In case of termination of pregnancy without the consent of the pregnant woman, the perpetrator has no intention of seriously harming bodily integrity or health, but rather is concerned with the desire to "favor a woman who is in a deadlock."

But there are also cases of over-zealousness during the discharge of duties and / or attitude of disregarding the right of a pregnant woman to decide with regard to her pregnancy. However, irrespective of what guides the actions of the perpetrator, which is a special subject, we consider that the act of termination of pregnancy without the consent of the pregnant woman must be sanctioned under art. 159 CC (The illegal induction of abortion), which is a special norm from the perspective of the subject under discussion.

**Conclusion.** National legislation, including criminal law, recognizes the harmful nature of abortion without the consent of the person. However, we believe that liability for actions to induce abortion without the consent of the victim is more appropriate to be established in the special norm of art. 159 CC.

<sup>31</sup> Ministry of Health, Regulation on forensic assessment of the severity of bodily injury, no. 199 of 27.06.2003. (Official Gazette of the Republic of Moldova, 2003, No. 170-172, article 224)

## FEMALE GENITAL MUTILATION

**Council of Europe Convention on preventing and combating violence against women and domestic violence** warns on the social danger of female genital mutilation.

### *Article 38. Female genital mutilation*

*Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are incriminated:*

- a) excising, infibulating or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris;*
- b) coercing or procuring a woman to undergo any of the acts listed in point a);*
- c) inciting, coercing or procuring a girl to undergo any of the acts listed in point a).*

The criminal legislation of the Republic of Moldova does not have a distinct norm that would recognize genital mutilation of a woman as a crime. At the same time, such offenses are subject to criminal liability under criminal law which establishes punishment for injury to bodily integrity or health, depending on the severity of the injury (Articles 151-152 of the Criminal Code, intentional serious or average injury to bodily integrity or health).

The regulation on forensic assessment of the severity of bodily injury no. 199 of 27 June 2003 does not contain concrete descriptions of total or partial mutilations of major labia, minor labia or clitoris, such cases have not been established in practice. At the same time, Regulation no. 199 establishes in p. 26, 54 that certain post-traumatic, non-life-threatening consequences, such as the anatomical loss of an organ or function, may be part of the serious bodily injury. Depending on the individual circumstances of the case, the facts may be qualified according to the aggravating elements - injuries of bodily integrity or health caused by scaring or torture.

**Conclusion.** The national criminal legislation punishes harmful acts that have resulted in injuries of bodily or health integrity. We do not consider that a specific provision / norm regarding female genital mutilation is necessary.

- ♦ The ICC Statute ends the listing of crimes against humanity and war crimes by the phrase **“or any other form of sexual violence.”** The elements of the ICC Statute identify sexual violence according to the following features: the perpetrator committed acts of sexual nature against one or more persons or caused a person or persons to engage in a sexual act; the action was committed by force or by threat of force, or by coercion such as fear of violence, violence, imprisonment, psychological oppression or abuse of power against such person or other person, or by taking advantage of a coercive environment, or the action was committed against a person incapable of giving a genuine consent.

It is important to keep in mind that the definition from the international norm operates with open-ended terms, such as acts of a sexual nature. Thus, a more flexible formula was used, given the diversity of inter-human relationships. Therefore, even the Statute of the International Criminal Court gives the term sexual violence a rather generic meaning, which, on the one hand, recognizes and includes the harmful acts listed in the norms as varieties of sexual violence. On the other hand, the term indicates their non-exhaustive character, leaving open the possibility of legal categorization and other acts of sexual nature, which “...at the time of committing it was considered an offense according to the general principles of law recognized by civilized nations.”<sup>32</sup>

The term any other form of sexual violence from the Statute of the ICC has materialized in the national criminal law in two ways:

1. Was taken over in its entirety in the norm of art. 135<sup>1</sup> of the Criminal Code:

**Article 135<sup>1</sup>. Offenses against humanity**

**(1)** *The commission, in a generalized or systematic attack launched against a civil population aware of such attack, of one of the following acts:*

*e) rape, sexual exploitation, coercion to prostitution, illegal detention of a woman impregnated in a forced way, for the purpose of altering the ethnic composition of a population, forced sterilization **or any other form of sexual violence;***

2. Was taken over in the ammended version under the norm of art. 137 of the Criminal Code:

**Article 137. War crimes against individuals**

**(3)** *The commission, in an armed conflict with or without international nature, against one or more persons protected by the humanitarian international law, of one of the following acts:*

*c) rape, sexual exploitation, coercion to prostitution, illegal detention of a woman impregnated in a forced way, to the purpose of altering the ethnic composition of a population, forced sterilization **or any other violent sexual act...***

National criminal legislation does not provide a definition of the term sexual violence. There is nothing specific in this regard in the criminal doctrine either. An abstention to do so is also found in the explanatory documents of the Supreme Court of Justice. This approach is understandable given that any attempt to define a term, an expression, inevitably narrows its semantics. However, this term now allows the qualification of any sexual acts that infringe the inviolability and sexual freedom of the person committed in the absence of the victim's express consent.

However, it should be noted that the definition of the term sexual violence is contained in art. 2 of Law no. 45 from 01.03.2007 on preventing and combating domestic violence,<sup>33</sup> in the context of defining forms of domestic violence. According to this law, "sexual violence is any violence of sexual nature or any illegal sexual conduct in the family or in other interpersonal relationships, such as marital rape, prohibition of the use of contraceptive methods, sexual harassment; any unwanted sexual conduct imposed; obligation to practice prostitution; any unlawful sexual behavior in relation to a minor

<sup>32</sup> Rome Statute of the ICC, art. 7, par. (2)

<sup>33</sup> Law no. 45-XVI of 01.03.2007 on preventing and combat-

ing domestic violence. (Official Gazette of the Republic of Moldova, 2008, No. 55-56, article 178)

family member, including fondling, kissing, posing the child and other undesirable sexual touches; other actions with similar effect “.

The quoted definition describes the concrete facts of a sexual nature that are found within this term and at the same time leaves open the possibility of including and other acts of sexual nature committed intentionally and without the free consent of the person in this notion. Thus, one seeks to have a unique way of presenting the concept of sexual violence at the international and national level.

While analyzing this situation from the point of view of the principle of legality, according to which criminal legislation is a set of legal rules, formulated in a clear, concise and precise manner, we consider relevant the explanation of the Constitutional Court on this subject. “... According to the caselaw of the European Court, the requirement regarding the clarity of criminal law is ensured when the litigant has the opportunity to know its contents from its text, if necessary by interpreting the rule by the courts and by obtaining appropriate legal assistance, and that the principle of the foreseeability of the law does not preclude the person from being determined to use clarifying guidance in order to be able to assess to a reasonable extent the consequences which might result from a particular action as part of the circumstances of the case.” (Cantoni v. France, [MC], judgment of 15 November 1996, §§ 29 and 35; Dragotoniu and Militaru-Pidhorni v. Romania, judgment of 24 May 2007, §§ 33-34 and 35; others v. Italy, judgment of 20 January 2009, §§ 107-109).<sup>34</sup>

As mentioned above, the international norm on sexual violence is found in the provision of Art. 137 of the Criminal Code in a modified version, with the phrase “any other violent action of a sexual nature”. This wording is similar to the norm of art. 172 CC (Violent sexual actions), and it includes the facts imputed by this norm.

It must be borne in mind that despite the non-homogeneous text of terms used in the ICC Statute (any other form of sexual violence) and in the provision of Art. 137 CC (any other violent sexual act), these provisions in principle are pursuing the same thing - the criminalization of the same harmful acts. However, the meaning of the terms will be similar after the review of the provision of art. 172 CC, currently the norm is using terms that deviate from the spirit of international standards.

In reference to the principle of applicability of laws, the European Court has held that the wording of the legislative norms can not be absolutely accurate. One of the standard regulatory techniques is to resort to general categories rather than exhaustive lists. Thus, many laws use, by force of things, more or less vague formulations, the interpretation and application of which depends on the practice. No matter how clearly a legal norm is drawn, in any system of law there is an inevitable element of judicial interpretation, including in a norm of criminal law. The need to elucidate unclear points and adapt to changing circumstances will always exist. Although certainty is a desirable thing while drafting of a law, this could lead to excessive rigidity. The law must be able to adapt to changing circumstances. The decision-making role of the courts seeks to remove the doubts that persists in interpreting the rules.<sup>35</sup>

**Conclusion.** The norms defining crimes against humanity and war crimes in the Criminal Code of the Republic of Moldova have appropriately taken over the reference text (any other form of sexual violence) from the ICC Statute. However, in order to ensure the compatibility of Art. 137 of the CC with the spirit of the international standard the textual revision of art. 172 of the Criminal Code of the Republic of Moldova is necessary.

<sup>34</sup> Constitutional Court Decision no. 27 of 21.09.2017 on the objection of unconstitutionality of some provisions of Article 109 paragraph (1) of the Criminal Code. (Official Gazette of

the Republic of Moldova, 2017, No. 364-370, Article 96)

<sup>35</sup> ECtHR, S.W. v United Kingdom. Judgment of 22 November 1995

## III.2. CHAPTER IV. SEXUAL OFFENSES OF THE CRIMINAL CODE COMPATIBILITY ANALYSIS WITH INTERNATIONAL NORMS

The compatibility analysis of relevant criminal norms with provisions of the Statute of the International Criminal Court requires the analysis of the compatibility of the criminal law, in particular the norms of Chapter IV, **Sexual Offenses** (Special part) of the Criminal Code of

the Republic of Moldova, which establishes the harmful facts that invade the inviolability and freedom of the person, in relation to other international treaties containing standards in this field.

### ◆ RAPE

Rape, as one of the worst sexual crimes is subject to criminal liability based on art. 171 of the CC

#### **Article 171. Rape**

**(1)** *Rape, namely the sexual intercourse committed by physical or psychological coercion of the person or taking advantage of its impossibility to defend itself or to express its will, is punishable by imprisonment from 3 to 5 years.*

**(2)** *Rape:*

- a) committed by a person who previously committed a rape provided at paragraph (1);*
- b) knowingly committed against a minor;*
- b<sup>1</sup>) knowingly committed against a pregnant woman;*
- b<sup>2</sup>) committed against a family member;*
- c) committed by two or more persons;*
- e) accompanied by intentional contamination with a sexually transmitted disease;*
- f) committed with extreme cruelty, as well as for sadistic reasons is punishable by imprisonment from 5 to 12 years.*

**(3)** *Rape:*

- a) against a person in charge, under the guardianship, protection, education or treatment of the perpetrator;*
  - b) against a minor under the age of 14;*
  - c) accompanied by the intentional contamination with AIDS;*
  - d) that caused by imprudence a serious injury to bodily integrity or health;*
  - e) that caused by imprudence the death of the victim;*
  - f) resulted in other serious consequences*
- shall be punished by imprisonment from 10 to 20 years or by life imprisonment.*

According to the provision of quoted criminal norm, the nonconsensual sexual intercourse only, is considered rape. According to the criminal doctrine, sexual intercourse is a normal sexual act (physiological) that creates conditions for conception. According to this hypothesis, the victim must be of a different sexual identity than the perpetrator. Any other acts or sexual contacts shall not be covered by the notion of sexual intercourse, so rape is delimited from other sexual offenses. Rape is committed by physical or psychological coercion of the person or by taking advantage of its impossibility to defend itself or express its will.

The crime of rape has a standard and aggravating forms. Aggravating forms are provided in paragraphs (2) and (3). Thus, the national criminal norm regarding rape, as well as the criminal doctrine, make it clear that the offense provided by art. 171 of the CC includes heterosexual rape only. The relevant norms of international treaties are the standard in this field and they are addressing the problem from the point of view of respect for human rights, confirming that rape involves not only nonconsensual sexual intercourse but also other acts of nonconsensual sex involving vaginal, oral or anal penetration of the person.

We reiterate that the **Elements of the Statute of the International Criminal Court** present Rape as one or several nonconsensual acts of penetration, however small, of any part of the victim's body with the sexual organ or the penetration of the victim's anal or genital orifice with any object or other part of body. Disregard towards victim's will in such cases is manifested through various means, including force or threat of force, or by coercion, such as the one caused by fear of violence, violence, imprisonment, psychological oppression, or abuse of power, against such a person or other person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving a genuine consent.

**The Council of Europe Convention on protection of children against sexual exploitation and sexual abuse**<sup>36</sup> qualifies Rape as an abusive sexual activity towards a child (sexual abuse), by use of coercion, force or threats, or using a position recognized as trustworthy, of authority or influence on the child, including

within the family, or using a particular vulnerability of the child, especially due to a mental or physical disability or due to a situation of addiction. The Lanzarote Convention does not indicate whether this activity should involve penetration of the anal, genital or any other part of the child's body, but the focus is on coercion and on the age criteria, which can determine the validity of consent.

It has been mentioned above that similarly to the ICC Statute, Rape is defined in the **Istanbul Convention**<sup>37</sup> engaging in nonconsensual vaginal, anal or oral penetration of the body of another person with any bodily part or object. Consent must be given voluntarily as a result of person's free will.

Ensuring compliance with international standards, the French criminal legislation, for example, defines in art. 222-223 CC that "... rape is any act of sexual penetration, regardless of its nature, committed against another person through violence, coercion, threat or surprise." Also, in art. 216 of the CC of Romania, rape is "...Sexual intercourse, oral or anal intercourse with a person, committed by constraint, by rendering the person in question unable to defend themselves or to express their will or by taking advantage of such state."

The 2013 Report of the Working Group on women's discrimination in legislation and in practice, which carried out under the United Nations mandate an assessment of the situation in the Republic of Moldova, mentions among others: "... The reason behind the differentiation of "rape" (Article 171 CC) and "homosexual rape" (Article 172 CC) remains unclear. This contributes to aggravating prejudice against homosexuality, especially from criminal law enforcement agencies and the judiciary."<sup>38</sup>

**Conclusion.** International standards, as well as the legislative practice of other countries tell us that the provision regarding the offense of rape provided for in Art. 171 CC of the Republic of Moldova should be reviewed based on the idea of criminalizing the nonconsensual act of penetration, so that the content of this provision, besides the sexual intercourse as it is currently provided in national criminal law, includes oral or anal intercourse regardless whether it is a heterosexual or homosexual act. It is also necessary to include in the provision regard-

<sup>36</sup> Lanzarote Convention, Art. 18; Explanatory Report of the Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse, pt. 118-120; available on: [rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d3832](http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d3832)

<sup>37</sup> Convention on preventing and combating violence against women and domestic violence, art. 36

<sup>38</sup> See: <http://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/CountryVisits.aspx>



ing rape the vaginal or anal penetration made with any part of the human body or with other objects. When defined like this, rape will cover all acts of penetration without victim's free consent, whether or not it has been committed by the perpetrator, or if the victim has been forced to do so. As regards ways of disregarding victim's will, the provision of the criminal law must provide that physical or psychological coercion may be applied not only against the potential victim but also against another person.

At the same time, given the social danger of the act, it is necessary to attribute this offense, even in its standard form to the category of serious crimes. This will ensure the proportionality of punishment in this norm with sanctions related to other offenses in this chapter. This will also exclude the temptation to resort to reconciliation in cases of rape, which is in essence a further form of pressure on the victim, a fact which is also highlighted by the Istanbul Convention.<sup>39</sup>

At the same time, we consider it necessary to include the definition of some terms in the Criminal Code in order to ensure more clarity in the application of the criminal norm and the qualification of rape. The aggravated circumstances regarding rape should largely be maintained in the current wording with the exception of the norm in para. (2), let. a), art. 171 of the CC. For this aggravated circumstance a new wording is suggested that would be as follows: "... committed by a person who has previously committed an act provided for in art. 171-175<sup>1</sup> of the Criminal Code".<sup>40</sup>

Also, art. 171 of CC is to be supplemented with other aggravating circumstances due to circumstances in which many rape cases are committed or which accompany many cases, as confirmed by the national judicial practice or that of other countries.

#### ♦ VIOLENT SEXUAL ACTIONS

Criminal Code of the Republic of Moldova criminalizes violent sexual actions in the norm of Article 172.

#### **Article 172. Violent sexual actions**

**(1)** *Homosexuality or the satisfaction of sexual desire in perverse forms, committed by physical or psychological constraint of the person or by taking advantage of its impossibility to defend itself or to express its will, is punishable by imprisonment from 3 to 5 years.*

**(2)** *The same actions:*

*a) committed by a person who previously committed an act provided at par. (1);*

*b) knowingly committed against a minor;*

*b<sup>1</sup>) knowingly against a pregnant woman;*

*b<sup>2</sup>) committed against a family member;*

*c) committed by two or more persons,*

*d) accompanied by the intentional contamination with a sexually transmitted disease;*

*g) committed with extreme cruelty, as well as for sadistic reasons shall be punished by imprisonment from 5 to 12 years.*

<sup>39</sup> Convention on preventing and fighting violence against women and domestic violence, art. 48; Explanatory Report of the Convention, p.36

<sup>40</sup> Proposal from the conclusions of the Prosecutor General's Report on the state of affairs in the area of investigating sexual offenses in the period 2013-2015.

**(3)** *The actions provided at paragraphs (1) or (2), which:*  
*a) were committed against a person who is certainly known not to have reached the age of 14;*  
*a<sup>1</sup>) were committed against the person who is under the care, guardianship, protection, education or treatment of the perpetrator;*  
*b) caused the intentional contamination with AIDS disease;*  
*c) caused by imprudence a serious injury to bodily integrity or health;*  
*d) caused by imprudence the death of the victim;*  
*e) caused other serious consequences,*  
*are punishable by imprisonment from 10 to 20 years or by life imprisonment.*

The offense provided in art. 172 of the CC has the standard and aggravating forms. The aggravating forms are provided in paragraphs (2) and (3) and are practically identical to those of rape offense provided in art. 171 of the CC. Even sanctions in these two norms are the same.

The provision of art. 172 par. (1) of the Criminal Code criminalizes homosexuality or the satisfaction of sexual desire in perverse forms in the absence of free consent. In paragraph 1 of the Decision of the Plenum of the Supreme Court of Justice no. 17 of 07.11.2005 on the judicial practice related to cases of sexual offenses,<sup>41</sup> the following terms are included:

- homosexuality is sexual intercourse between males, lesbianism is sexual intercourse between females;
- Satisfying sexual desire in perverse forms is the practice of unnatural sexual, aimed at satisfying the sexual instinct through different procedures (anal-genital, oral-genital, oral-anal) except for homosexuality and lesbianism.

The criminal doctrine explains the harmful actions provided in art. 172 CC as actions that emulate sexual intercourse, or in another action related to male or female genital organs or other parts of the body, performed to satisfy sexual desire (necessity). Such an action is not limited to “sexual penetration” of person’s natural orifices to satisfy sexual desire (necessity). Other sexual acts or contacts are involved, involving the genitals or other parts of the human body. Therefore, the norm of art. 172 CC in the current wording provides for any acts or contacts of a sexual, homosexual or heterosexual nature other than sexual intercourse, all of which are

defined as perverse forms for the satisfaction of sexual needs.

In fact, the use of expression homosexuality in the provision of paragraph (1), art. 172 CC, is nothing more than a discriminatory approach to persons of another sexual orientation, who are a priori considered to have “other than normal/natural” relationships. At the same time, the use of statement satisfaction of sexual desire in perverse forms maintains a moral language in defining sexual relations and induces the idea of setting “normal” sexual relations against other “perverse” forms of satisfaction of sexual needs. But in this case, something else matters, namely, whether these relationships were based on freely expressed consent or occurred through coercion or other unfavorable circumstances for the victim.

The relevant norms of international treaties, having standard status in this field, addressing the issue from the perspective of respecting human rights, make a delimitation between sexually harmful actions that are manifested by “sexual penetration” of another person’s natural cavities, defined by the generic term Rape, and other harmful acts (sexual acts) involving the genitals or other parts of the body to satisfy the sexual need known as Sexual violence. In national criminal law, such harmful acts (harmful sexual acts (contacts) can be categorized under the generic term **Violent sexual actions**.

To confirm the above mentioned, we revert to the notion of Sexual violence as formulated in the **Elements of the Statute of the International Criminal Court** and which refers distinctly to “sexual acts committed by a perpetrator

<sup>41</sup> Bulletin of the Supreme Court of Justice of the RM, 2006, nr.3, pag.11

against one or more persons”.

**The Lanzarote Convention**<sup>42</sup> uses in a broad sense the term of abusive sexual activity committed with the use of coercion, force or threats, taking advantage of a situation of particular vulnerability of the child or of a position recognized as trustworthy, etc.

In the same way as in the ICC Statute, Sexual violence is defined (in the part separated from rape) in the **Convention on preventing and combating violence against women and domestic violence**<sup>43</sup> as an “engagement in other nonconsensual sexual acts with a person”.

**Conclusion.** In order to ensure the compliance of national criminal legislation with the provisions of international standards on sexual offenses, it is necessary to revise Art. 172 of the Criminal Code of the Republic of Moldova. The revised norm must establish criminal liability for ‘nonconsensual sexual acts other than rape’. It is also necessary to make sure that in order to defeat resistance, violence can be applied not only against the potential victim but also against another person.

The aggravating circumstances are to be taken from the norm on rape with some exceptions. In particular, aggravating circumstances “accompanied by intentional contamination with a sexually transmitted disease”, “caused intentional contamination with AIDS “ etc. would not be appropriate here, based on the nature of the facts criminalized by this rule.

It is important to note that the term Sexual violence, as formulated in the **Elements of the Statute of the International Criminal Court** and in the **Istanbul Convention**, also includes an element to be considered. Thus, according to provisions of the ICC Statute, the perpetrator:

- has caused a person or persons to engage in sexual actions by using force or threats of force or by coercion such as fear of violence,

violence, detention, psychological oppression or abuse of power against such a person or other person, or taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving a genuine consent.

**The Istanbul Convention** also insists on criminalizing the actions of the perpetrator regarding:

- determining another person to engage in non-consensual sexual acts with a third party.

In such situations national criminal legislation assigns the person the role of an instigator. Thus, according to art. 42 of the CC, the person who by any means causes another person to commit an offense is considered an instigator. The doctrine explains the methods of instigation, which, based on practice, can be extremely varied: inducement, insinuation, coercion, relenting, ordering, deception and other. Determination can be achieved by actions, spoken or written statements, and even gestures or signs of unambiguous significance, but they necessarily should be concrete. That is to say, the person is guilty of committing a specific offense, for example, rape or committing an nonconsensual sexual act, etc.

In accordance with art. 83 of the CC, the instigator of a criminal offense, committed intentionally and provided for by the criminal law, shall be sanctioned by a punishment stipulated by the law.

**Conclusion.** The national criminal legislative framework has the tools to investigate actions aimed at determining by any means a person to engage in nonconsensual sexual acts with a third party, these acts being sanctioned by the punishment prescribed by law for the perpetrator. Under these circumstances, we do not believe that it is necessary to make any legislative changes.

<sup>42</sup> The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, art.18.

<sup>43</sup> Lanzarote Convention, art.36

## ◆ SEXUAL HARASSEMENT

Criminal Code of the Republic of Moldova criminalizes actions of sexual harassment in the norm of article 173.

### **Article 173. Sexual harassment**

*Sexual harassment, namely the manifestation of a physical, verbal or non-verbal behavior that harms the dignity of a person or creates an unpleasant, hostile, degrading, humiliating, discriminatory or insulting atmosphere in order to determine a person to sexual intercourse or other unwanted sexual actions, committed by threat, coercion, blackmail,*

*is punishable by a fine from 650 to 850 conventional units or by community service from 140 to 240 hours or by imprisonment for up to 3 years.*

Thus, the criminal code includes the following components:

- the perpetrator exhibits physical, verbal or non-verbal behavior;
- any of these types of behavior harm the dignity of the person or creates an unpleasant, hostile, degrading, humiliating, discriminatory or insulting environment;
- the perpetrator, by manifesting these types of behaviour, pursues the purpose of determining a person for sexual intercourse or other unwanted sexual acts;
- the perpetrator, resort to threats, coercion, blackmail in order to achieve his purpose.

Thus, the structure of the criminal provision shows that some actions are carried out, and

then lead to certain consequences which (actions) are performed with a certain purpose, and at the end of the provision there are other actions aimed at achieving the same purpose. We consider that the wording of the norm is rather complicated and it does not provide a clear answer at least to the following question: is it sufficient for the elements of the crime to be consumed through any of the indicated ways of behavior (verbal, nonverbal or physical) which has damaged his dignity or has created an insulting atmosphere or there should be at least one of the actions indicated in the provision - threat, coercion, blackmail?

Sexual harassment, as proposed in Art. 40 of the **Istanbul Convention** also provides for sanctions.

### **Article 40. Sexual harassment**

*Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.*

The quoted norm includes the following components:

- there is a form of verbal, non-verbal or physical sexual behaviour;
- any of these types of behaviour has the purpose or effect of violating the dignity of the person;
- these forms of behaviour in particular can create an intimidating, hostile, degrading, humiliating or offensive environment.

Thus, both the norm of the international treaty and the norm of art. 173 CC refer to similar varieties of behaviour and follow the psychological balance of the victim. At the same time, there is a diversity of approaches when it comes to the aim. The national criminal legislation highlights the purpose pursued by the perpetrator - to determine a person to a sexual intercourse or other unwanted sexual acts. The norm of the international treaty highlights the effect of violating a person's dignity.

We consider that the provision of art. 173 of the CC contains wording which is both complex and ambiguous. The text abounds in terms that claim to be alternatives, but which essentially do not differ in meaning (for example, the degrading, humiliating, insulting environment).

**Conclusion.** The norm of the national criminal legislation referring to sexual harassment claims to be harsher compared to the elements of norm on sexual harassment in the Istanbul Convention. At the same time, the practice of applying Art. 173 CC remains insignificant, which also affects the level of protection of potential victims. We therefore believe that it is necessary to amend the current version of

the provision of the above-mentioned criminal norm and the following wording is proposed as a working version: "Sexual harassment, i.e. manifestation of a physical, verbal or non-verbal behavior, to determine a person to perform unwanted sexual acts, which creates a hostile, discriminatory, humiliating environment, damaging the dignity of the person, is punished ... ". We believe that in this way the norm of the national criminal legislation will be closer to the letter and spirit of international standard by highlighting the effect of the perpetrator's actions in relation to the victim. Thus, during the investigation process, the emphasis will be on the victim's degree of suffering and from this perspective the punishment will be decided. This might not happen if all efforts are aimed at proving the intentions pursued by the perpetrator, which is extremely difficult, and usually places the investigation on a completely different track with a predictable end of classifying the case.

Sexual activities with children can endanger their lives, health, development, dignity or morality. Chapter IV, **Sexual offenses** in the Special Part of the Criminal Code of the Republic of Moldova contains a few norms exclusively for the protection of sexual inviolability of children under the legal<sup>44</sup> age, which is the age after which the child can already exercise his right to sexual autonomy and decide freely and responsibly on issues related to sex. Thus, the criminal law of the Republic of Moldova does not recognize sexual freedom of children under the age of 16, irrespective of their level of physical maturity. Any reference to the consent of a child under the age of 16 is irrelevant.

<sup>44</sup> The Criminal Code of the Republic of Moldova recognizes as valid the sexual consent of the person who has reached

the age of 16. This also derives from the requirements of art. 14 of the Family Code on the matrimonial age of the person.

♦ SEXUAL INTERCOURSE WITH A PERSON WHO HAS NOT REACHED THE AGE OF 16 YEARS

Sexual intercourse with a person who has not reached the age of 16 years is criminalized by the norm of article 174 of the Criminal Code of the Republic of Moldova.

**Article 174. Sexual intercourse with a person who has not reached the age of 16**

**(1)** *The sexual intercourse other than rape, vaginal, anal, oral or other penetration, committed against a person who is certainly known not to have reached the age of 16, shall be punished by imprisonment from 3 to 7 years.*

**(2)** *The person who committed the act provided at paragraph (1) shall not be bound by criminal liability if it is at a close level to the victim in terms of age and physical and mental development.*

According to points 4, 19 of the Decision of the Plenum of the Supreme Court of Justice no. 17 of 07.11.2005 on the judicial practice in cases related to sexual offenses,

*“... while delimiting the elements of the offense provided by art. 171 par. (2) lit. b), 172 par. (2) lit. b) CC from the elements of the offense provided by art. 174 CC, the courts will consider that sexual intercourse .... with a person who has not reached the age of 16 occurs without constraint and without taking advantage of the victim’s state of helplessness and the latter understood the nature and essence of actions committed ... According to art. 174 CC one qualifies sexual intercourse ... with a person who has not reached the age of 16, if there was victim’s consent for these actions. ... acts committed with a young person whose consent does not have legal value, because he does not understand the significance of what happens to him, and it does not qualify according to art. 174 CC but according to art. 171 par. (3) let. b) or art. 172 par. (3) let. a) CC. The victim of the offense referred to in art. 174 CC can only be a female or male, who at the time when crime was committed did not reach the age of 16 years. It is mandatory for the perpetrator not to assume, but to know for certain that at the time the offense was committed, the victim did not reach the age of 16 years. This certainty may be due to: prior knowledge of the victim, victim’s external appearance, victim’s behaviour, etc. “.*

Taking into account provisions of quoted criminal law, art. 174 of the Criminal Code covers sexual acts that involve the penetration of the natural cavities of minor victim’s body. From

this point of view, the criminal norm of art. 174 CC corresponds to the spirit of relevant international standards.

According to the **Lanzarote Convention**, state parties shall take necessary legislative measures in order to ensure the criminalization of

*a) engaging in sexual activities with a child who, according to the relevant provisions of national law has not reached the legal age for sexual activities; b) engaging in sexual activities with a child where: abuse is made of a recognised position of trust, authority or influence over the child, including within the family;... For the purpose of paragraph 1 above, each Party shall decide the age below which it is prohibited to engage in sexual activities with a child. The provisions of paragraph 1.a are not intended to govern consensual sexual activities between minors.*<sup>45</sup>

As mentioned above, the **Lanzarote Convention** broadly uses the term sexual activity, which includes not only acts of sexual penetration but also other sexual actions which it defines by a generic term sexual abuse of the child. At the same time, it is known that the social danger (in view of the seriousness of the act and the consequences for the victim) of the act of sexual penetration is different from that of other sexual acts. International standards that are found in the ICC Statute and the Istanbul Convention and which regulate sexually explicit acts and other acts of sexual nature insist on the delimitation of these facts.

State has the obligation to ensure the implementation of norms of international treaties at the national level to which it has committed, while being obliged to ensure a criminal legislative framework with fair punishments, subject to the seriousness of the offence committed. The achievement of these objectives is possible, through a new wording of art. 174 CC and art. 175 CC, similar to the model proposed for art. 171 CC and art. 172 CC, taking into account the subject of the victim, who is a minor and the manifestation of consent.

In this context, returning to the norm of art. 174 CC, it is necessary to review the article in question starting with the name of the norm, using a generic term, which could be: "Sexual act with a person under the age of 16". Also, the provision of this norm could be formulated as follows: "Acts of sexual penetration other than those referred to in Art. 171 CC (or as an alternative: other than rape) committed against a person who is surely certain to be under the age of 16 shall be punished ...".

At the same time, we consider it necessary to establish, in line with the requirements of the Lanzarote Convention, the liability for these aggravating facts (one or more aggravating facts) in the event of those being committed by persons who "abuse a position of trust, authority or influence over the child". It is necessary to examine the opportunity to include cases of committing the harmful act by two or more persons, as an aggravating sign which intensifies the social danger of the offense by distorting certain social, ethical and moral values seriously damaging the development of the minor.<sup>46</sup>

Article 174, paragraph (2) of the Criminal Code contains an exemption from criminal liability of the perpetrator when:

- 1) the perpetrator and victim are at a close age;*
- 2) the perpetrator and the victim are at a close level of physical development;*
- 3) the perpetrator and the victim are at a close level of psychological development.*

<sup>45</sup> Lanzarote Convention, art. 18

<sup>46</sup> Lanzarote Convention, art.28, let. e).

This is the subject of the **Lanzarote Convention**, but specifying that these provisions “do not apply to consensual sexual activities between minors”. Thus, Art. 174, par. (2) the Criminal Code has an application to a larger circle of persons, including those who have passed the legal age, but by virtue of factors “they are at a development level, which is close to the minor victim”.

**Conclusion.** In order to ensure compatibility with international standards in the field, it is necessary to revise the provision of paragraph (1), art. 174 of the Criminal Code. At the same time, it is necessary to examine the opportunity

to include in this norm the aggravating circumstances for the offense committed by persons where the minor is in care, protection, education, guardianship or treatment, as well as the offense committed by two or more persons.

The provision of paragraph (2), art. 174 of the CC, as compared with the relevant norm of the Lanzarote Convention, has a wording that allows it to be applied to a larger circle of people. It is advisable to review the content of paragraph (2), art. 174 of the Criminal Code of the Republic of Moldova to ensure compliance with the international standard (the Lanzarote Convention).

#### ◆ PERVERSE ACTIONS

Article 175 of the Criminal Code of the Republic of Moldova criminalizes perverse actions, the norm having the following wording:

##### **Article 175. Perverse actions**

*The perverse actions committed against a person who is certainly known not to have reached the age of 16, consisting in exhibition, indecent touches, obscene or cynical discussions with the victim regarding sexual relations, determination of the victim to attend or assist pornographic performances, the provision of pornographic materials to the victim, as well as for other sexual actions, shall be punished by imprisonment from 3 to 7 years.*

The scope of art. 175 CC, as explained in paragraph 20 of the Plenum of the Supreme Court of Justice no. 17 of 07.11.2005 on judicial practice in relation to cases from the category of sexual offenses are the sexual actions that have been committed with the consent of the victim, in particular exposing of the body or genitals of the perpetrator in the presence of the victim; exposing of the victim’s body or genital organs, accompanied by contemplation, indecent touching of the victim; sexual intercourse, sexual act or other sexual actions, under such conditions so as the victim may be able to follow such actions; obscene and cynical discussions with the victim about sex; hearing pornographic records with the victim; watching images of any type with the same

content with the victim; reading pornographic literature along with the victim, etc. The victim of the crime provided by art. 175 CC may only be the male or female person who at the time of committing the crime was under the age of 16. It is imperative that the perpetrator does not assume, but knows for sure that at the time the offense was committed, the victim did not reach the age of 16 years.

Thus, the norm of art. 175 CC is applicable for intentional sexual acts other than actions of sexual penetration, determining the victim to participate or to assist in sexual activities, this being in line with the spirit of international standards in the field. In this respect, it is worth mentioning the norm of art. 22 of the Lanzarote Convention, which specifies the need to



*“...criminalize the intentional causing, for sexual purposes, of a child who has not reached the age set in application of Article 18, paragraph 2, to witness sexual abuse or sexual activities, even without having to participate.”*

At the same time, the title and provision of art. 175 CC uses the term Perverse actions, which are not accepted to be used in international legislation. These terms place the issue of sexual violence at the forefront of analysis and appreciation of facts based on morality criteria and are judged to be discriminatory.

The Lanzarote Convention uses the generic term “Corruption of Children” for the offenses

criminalized in this norm. We consider it relevant that this term is taken over into the national criminal law. Given that national legislation operates with the term minor, it is proposed that art. 175 CC be titled Sexual corruption of minors.

It is also proposed to exclude the term Perverse Actions from the provision of the norm, which may be proposed in the following wording:

*“The intentional commission of sexual actions against a person who certainly knows that he or she has not reached the age of 16, consisting of exhibition, indecent touches, obscene or cynical discussions with the victim about sexual intercourse, the determination of the victim to participate or to attend pornographic performances, the provision of pornographic material to the victim, is punished ...”*

Starting from the unique requirements specified in the Lanzarote Convention with respect to sexual actions concerning the child, it is proposed to establish aggravating circumstances related to people who “abuse a known position of trust, authority or influence over the child” in Art. 175 CC. At the same time, we welcome the proposal to add a paragraph to art 175 CC, similar to the current version of art. 174, paragraph (2) CC.

**Conclusion.** In order to ensure compatibility with international standards in the field, it is necessary to review the title and provision of art. 175 of the Criminal Code. At the same time, it is necessary to consider whether to include aggravating circumstances in this norm (see the above proposals) and to supplement the norm with a paragraph similar to the one in art. 174, paragraph (2) CC.

### ◆ SOLICITATION OF A MINOR FOR SEXUAL PURPOSES

The Criminal Code of the Republic of Moldova incriminates Solicitation of a minor for sexual purposes, this is a provision in article 175<sup>1</sup>.

#### **Article 175<sup>1</sup>. Solicitation of a minor for sexual purposes**

**(1)** Proposal, persuasion, manipulation, threat, promise to provide benefits in any way, including through information technologies or electronic communications, in order to establish a meeting with a minor, to the purpose of committing against it any sexual offence, if these actions were followed by material facts leading to such a meeting, shall be punished by imprisonment from 2 to 6 years.

**(2)** The same actions committed:

- a) against a minor who is in a state of helplessness due to a disease or disability;
- b) by a member of the minor's family, by a person living with the minor or by a person under whose care, protection or education or treatment the minor is;
- c) by a person who was previously convicted of a sexual offence or other acts relevant for that case are punishable by imprisonment from 3 to 8 years.

The legislator explains the necessity of the new wording of art. 175<sup>1</sup> of the Criminal Code: "Despite the fact that criminal legislation has been amended to criminalize sexual exploitation of children by enticing them to have a sexual intercourse, there has been a need for this norm

to be supplemented ... to detail and enlarge the range of means by which the minor can be exploited, as well as increase the level of protection of the minor against potential criminals. "

The Lanzarote Convention contains a clear norm on this issue in a separate article.

#### **Article 23. Solicitation of children for sexual purposes**

*Each Party shall take the necessary legislative or other measures to criminalise the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18, paragraph 2, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a, against him or her, where this proposal has been followed by material acts leading to such a meeting.*

The quoted norm includes the following components:

- criminalizing the sexual proposal intentionally made by an adult to a child under the legal
- age for him to be able to express his sexual freedom;
- the use of communication and information technologies for this purpose;

- the proposal was followed by material facts leading to such a meeting.

Compared to the above-mentioned norm one can see that the national criminal norm substantially widens the scope. However, this does not necessarily mean greater effectiveness of criminal law, and an increased level of effective protection of children against such acts.

Compared with the facts contained in the standard mentioned in the Lanzarote Convention, the provision in art. 175<sup>1</sup> CC in the objective side includes actions such as "... persuasion, manipulation, threat, promise of offering any kind of benefits, including ...", ie all these actions can be accomplished in other ways than by means of information technologies or electronic communications. In other words, through real contact as well. So, in essence, it can even be actions included in the objective side of offenses specified under art. 171-175 of the Criminal Code, especially as it concerns "... a member of the minor's family, ... a person living with the minor ... the person in whose care, under whose protection or education or treatment the minor is". Thus, it is about the people who can have contact with the child without resorting to information technologies or electronic communications, the actions of which are aimed at coercing or manipulating the minor into sexual acts. In our view, the legislator in an effort to include a broader range of situations falling under this criminal law, actually diminishes the force of this law, including by overlapping the facts that fall within the objective aspect of various criminal norms contained in Chapter IV, Special Part of the Criminal Code.

In our opinion, art. 23 of the Lanzarote Convention has pursued the purpose of criminalizing the solicitation of children for sexual purposes by unknown persons who have no other means

of learning about a child and luring the child for sexual purposes than by using the communication and information technologies (such acts committed by persons known to the child could be classified as attempted offense, provided, as appropriate by Articles 171-175 of the Criminal Code). At the same time, the norm of art. 23 of the Lanzarote Convention is complete and does not require a wider treatment. It is true that there would be no problem in wider treatment of the international standard when this increases the effectiveness of child protection. It seems, however, that this desiderata remains questionable, given the lack of statistics on cases initiated under Art. 175<sup>1</sup> Criminal Code.

Therefore, we consider that Art. 175<sup>1</sup> of the Criminal Code should only criminalize intentional actions that result in the proposal through information and communication technologies to a child to meet for the purpose of committing any sexual offense. At the same time it is necessary to develop in the doctrine the phrase "material facts leading to such a meeting" from the provision of this norm, in order to ensure greater clarity in the application of the respective criminal norm.

**Conclusion.** In order to ensure compatibility with international standards in this field, it is necessary to review the provision of art. 175<sup>1</sup> of Criminal Code. The following wording is proposed as a working version: "Article 175<sup>1</sup>. Grooming minors for sexual purposes

Proposal, persuasion, manipulation, threat, promise to provide any benefits, including through information technologies or electronic communications in order to establish a meeting with a minor, to the purpose of committing any sexual offence against him, if these actions were followed by material facts leading to such a meeting shall be punished...

#### ♦ TITLE OF THE CHAPTER IV SEXUAL OFFENCES OF THE CRIMINAL CODE – CONCEPTUAL REMARKS

Chapter IV (Special part) of the Criminal Code of the Republic of Moldova has the title **Sexual offenses**. We are of the opinion that the title of this chapter of the Criminal Law does not fully meet the requirements of clarity and completeness.

The national criminal doctrine, though indirectly, creates a link between sex life and the relatively near period of starting life in a couple, the need to have a family and children, etc. at least from the age at which legal norms (but also the cultural tradition) accept the start of sex life. Life is a synthesis of biological, physical, chemical, and mechanical processes that characterize a body. Respectively, sex life is the synthesis of processes that at a stage of development forms the sexual need and cause the body to engage in sexual intercourse. Therefore, until the first signs of sexual need appear, it is extremely difficult to talk about an individual's sex life. The reference to sex life of a minor under 10 years of age would, for example, be as irrelevant and illogical as killing or harming the body integrity of the barely conceived embryo. At the same time, even before starting sex life, the child has the right to have his sexual inviolability protected.

Considering the need of a generic object for all the crimes in this chapter and given that the

notion of sex life is not characteristic for an early age, we consider that a better name for this chapter of the criminal law would be: **Offenses against sexual inviolability and freedom of the person**. Thus, the generic object would be the social relationships regarding the safety of the person against the illegal actions of a sexual nature. The special legal object is, as appropriate, sexual freedom or sexual inviolability.

It should also be noted that according to art. 7 of the Criminal Code, the offense is a harmful act. Consequently, the generic notion of offenses against sex life means volens-nolens that sex life in its essence would be a punishable harmful act, which is not the case. Sex life is a too general term to define the values violated by offenses in this chapter. Sex life refers to the sexual activities of a person in general, while criminalized facts are not generally related to sexual activities, but rather actions that criminalize sexual freedom and inviolability. Violation of sexual freedom or sexual inviolability whose integrity the state is obliged to protect, even in case of persons who do not yet feel the need to start sex life, is punishable.

Therefore, the title proposed is as follows: Chapter IV. Offenses against sexual inviolability and freedom of the person.

#### ♦ PROCEDURAL ASPECTS

After studying the practice of investigation and judicial examination of offenses related to sex life it was found that victims of these crimes still remain marginalized during the criminal proceedings. The results of criminal investigation and judicial proceedings do not demonstrate, in a convincing manner the concern for effective protection and rehabilitation of the victim of offense. The national criminal procedure legislation has repeatedly been subject to amendments and supplementing in order to increase the degree of protection of the victim of crime. However, international legal practice in combating sexual violence and sexual abuse confirm the need to consider the specificity of sexual offenses. The specificity and extremely sensitive nature of this category of offenses also requires special measures to ensure an adequate level of protection for the victim, providing additional safeguards for the

victim to benefit in a proper way from effective assistance and rehabilitation, determined by circumstances and consequences of the act in relation to the victim.

Going forward, we propose to analyze the extent to which the national criminal procedure law provides protection and procedural safeguards to the victim of sexual offenses in accordance with the spirit and the text of the standard rules of mentioned international treaties.

- ♦ Ascertaining the fact of committing or preparing to commit a crime provided by the Criminal Code, the criminal investigation body, the prosecutor may order the commencement of the criminal investigation if there is no circumstance that excludes prosecution. According to art. 262 of the Criminal Procedure Code the initiation of criminal investigation can only be done upon the preliminary complaint, therefore criminal investigation can not start in its absence.

Article 276, paragraph (1) of the Criminal Procedure Code defines offenses for which the criminal investigation is initiated only on the basis of victim's prior complaint.

*(1) A criminal investigation shall be initiated based only on a victim's complaint in the case of crimes provided in arts. 152 para. (1), 153, 155, 157, 161, 173, 177, 179 paras. (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> and 274 of the Criminal Code, and if the theft of the owner's property is committed by a juvenile, spouse, relatives, to the detriment of a tutor or by a person living with or hosted by the victim. Should the injured party reconcile with the suspect/accused/defendant in cases specified in this paragraph, the criminal investigation shall terminate.*

It is known that often the victim of sexual harassment is studying or has a working relationship with the perpetrator. Sometimes the victim of sexual harassment can be under care or is dependent in any other way on the perpetrator. In the case of special or subordinate relations, or in the case of a certain dependance from to the perpetrator, the victim will face major difficulties in achieving the right of free access to justice. In such situations, the victim will find it much harder to report the offense to authorities and will be much more vulnerable to the pressure from the perpetrator to withdraw her complaint. Therefore, it can not be about an effective satisfaction of the interests of the injured party if the law imposes the condition of

starting the criminal proceeding on sexual harassment exclusively upon victim's complaint, which, as it has been mentioned, is often vulnerable in relation to the perpetrator, and at the same time allows the cessation of the trial after an alleged reconciliation between the injured party and the suspect, accused or defendant.

It is relevant to mention that reconciliation is applicable not only to cases initiated for sexual harassment but also to any other case related to sexual offenses, even if the other criminal articles in this category of offenses are not listed in paragraph (1), art. 276 of the Criminal Procedure Code. This follows from the provisions of art. 109 of the Criminal Code.

#### **Article 109. Reconciliation**

*(1) Reconciliation is the act of eliminating criminal liability for a minor or less serious offence and in case of minors, and for a serious offence the offences provided at chapters II to VI of the Special Part, as well as in the cases provided by the criminal procedure if the person does not have criminal antecedents for similar offences committed intentionally or if in its respect the cessation of the criminal proceedings was not ordered, as a result of reconciliation, for similar offences committed intentionally over the past five years.*

*(2) Reconciliation is personal and produces legal effects from the time the criminal prosecution is initiated until the panel of judges withdraws for deliberation.*

**(3)** For people lacking exercise capacity, reconciliation is done by their legal representatives. Those with limited exercise capacity may be reconciled with the consent of the persons provided by the law.

**(5)** Reconciliation does not apply to persons who committed against minors offences provided at art. 171–175<sup>1</sup>, 201, 206, 208, 208<sup>1</sup> and 208<sup>2</sup>.

According to the Study “Analysis of judicial practice regarding sexual offenses to identify gaps that deprive victims of effective remedy and protection,” out of a total of 240 cases of sexual offenses examined, in 120 cases, victims filed applications for the cessation of the trial because of the reconciliation of parties. 83 requests for reconciliation were accepted and 37 applications were rejected.

As a rule, the content of cessation decisions does not trigger an analysis of the reasons for reconciliation, and whether the consent of the victim is freely expressed, without influence or pressure from the perpetrator. Moreover, there were cases of cessation of the trial in connection with the reconciliation of the parties, despite the fact that during the trial the victim mentioned the pressure made by the defendant who “... terrorizes my family, threatens me, degrades me ..., the application for reconciliation was made by the policeman and he gave it to me for signature. “ These cases confirm

an often formal, superficial approach by the competent courts, which having the reconciliation agreement with the victim’s signature have disregarded the fact that the victim’s will might be different, and namely that the defendant be held criminally liable. Moreover, this fact is not investigated by the court even in case of minors, and they are not asked if they agree with the reconciliation. Regretfully, these cases are not unique and prove a superficial examination of the facts, without realizing and understanding the true position of the victim.

This confirms that the norm from art. 109 of the Criminal Code is disadvantageous to the victim of sexual crime, due to factors mentioned above. At the same time, the applicability of reconciliation to the criminal norms contained in Chapter IV of the Special Part of the Criminal Law is contrary to the requirements of the **Convention on preventing and combating violence against women and domestic violence**, which provides for ex-party and ex-officio procedures.

#### **Article 55. Ex parte and ex officio proceedings**

**(1)** Parties shall ensure that investigations into or prosecution of offences established in accordance with Articles 35, 36, 37, 38 and 39 of this Convention shall not be wholly dependant upon a report or complaint filed by a victim if the offence was committed in whole or in part on its territory, and that the proceedings may continue even if the victim withdraws her or his statement or complaint.

According to the Explanatory Report to the Istanbul Convention, the adoption of this norm took into account the particularly traumatic nature of these crimes. The purpose of the

provision is to allow the investigation and prosecution without making the victim initiate these procedures and guaranteeing victim’s safety. It also states that since many violations to which

the Istanbul Convention applies are committed by intimate partners or persons who are in the social environment from the immediate vicinity of the victim, resulting in feelings of shame, fear and powerlessness of the victim, the number of complaints, and hence of punishment, is low. Therefore, law enforcement agencies should

investigate the alleged offense proactively in order to collect material evidence and ensure that prosecution can be carried out even if the victim has withdrawn his or her claim or complaint.

Similarly, this issue is tackled in the **Lanzarote Convention**, which highlights a special condition for the initiation of proceedings.

### **Article 32. Initiation of proceedings**

*Each Party shall take the necessary legislative or other measures to ensure that investigations or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, and that the proceedings may continue even if the victim has withdrawn his or her statements.*

The need to amend the legal norms mentioned above is determined by the necessity of strengthening the mechanism of protecting the victim of sexual violence in the criminal procedure and, at the same time of adjusting the criminal legislative framework of the Republic of Moldova to the requirements of the Istanbul Convention and the Lanzarote Convention. These are requirements that exclude the possibility of having the victim initiate the process of criminal prosecution in cases of sexual abuse or sexual assault and prohibit any attempt to order the cessation of criminal prosecution of sexual offenses if there is a reconciliation with the perpetrator. Last but not least, we must bear in mind that parties' reconciliation in cases of sexual violence diminishes the perpetrator's liability for violent behavior and reinforces the hypothesis that both sides are equally guilty for what has taken place. It is also trying to promote the idea that both sides have equal power to negotiate. As a rule, reality is different and involves additional risks for the victim.

**Conclusion.** The norm in art. 109 of the Criminal Code and the norm in art. 276, par. (1) of the Criminal Procedure Code in the part related to sexual offenses in respect of the adult victim does not comply with the requirements of the Istanbul Convention. In order to ensure compliance of the national legal framework with international standards in the field and exclude

factors that imply additional pressure on the victim / adult injured party on the grounds of sexual assault, it is necessary to make changes in the current wording of articles below:

- in the provision of art. 276, paragraph (1) of the Criminal Procedure Code, it is proposed to exclude phrase "173", thus removing the current requirement for the commencement of the criminal investigation for sexual harassment, only upon prior complaint of the victim of the offense;
- in the provision of art. 109, par. (1) of the CC it is proposed to replace the word "Chapters II to VI" with the wording "Chapters II-III, V-VI" and in para. (4) of this norm to exclude the word "171-175<sup>1</sup>" in view of the irrelevance of keeping it since there is a withdrawal of parties' reconciliation and therefore it has no bearing on Chapter IV of the Special Part of the Criminal Code, which refers to sexual offenses.
- ♦ The criminal proceedings<sup>47</sup> are aimed at protecting the person from offenses and protecting the person from illegal acts of the persons in position of power in their role related to criminal investigation activity. In accordance with art. 23 of the Criminal Procedure Code, the criminal procedural legislation ensures the rights of the victim injured by the crimes or abuses at work. The victim of an act constituting an offense has the right to request under

<sup>47</sup> Criminal Procedure Code of the Republic of Moldova, Art. 1. (Official Gazzette of the Republic of Moldova, 2003, No. 104-110, article 447)

the Code the commencement of a criminal case, participate in the criminal proceeding as injured party and receive physical and material damages.

The Criminal Procedure Code defines the procedural status, rights and obligations of the victim / injured party in criminal proceedings in art. 58-60.

#### **Article 58. Victim**

**(1)** *A victim is any individual or legal entity that suffers moral, physical, or material damage due to a crime. A victim has an interest within criminal proceedings and is interested in its results.*

**(2)** *A victim has the right to have his/her complaint immediately registered in the duly prescribed manner to be settled by a criminal investigative body and to be thereafter notified about the results of such a settlement.*

**(3)** *A victim has the following rights:*

- 1) to get an affidavit from a criminal investigative body confirming that he/she filed a complaint, or a copy of the transcript of the written complaint;*
- 2) to submit documents, objects and other means of evidence supporting his/her complaint;*
- 3) to file an additional complaint;*
- 4) to be informed by the criminal investigative body, prosecutor or, as the case may be, by the court about the settlement of his/her request, the issued judgments referring to his/her rights; to receive, upon request, free of charge, copies thereof, as well as copies of the judgment to terminate or dismiss criminal proceedings in the case, not to initiate criminal investigation, copy of the sentence, decision or any other final court judgment;*
- 5) to request that the criminal investigative body acknowledge him/her as an injured party in a criminal case;*
- 6) to submit a request to be acknowledged as a civil party in a criminal proceeding;*
- 6<sup>1</sup>) abrogated;*
- 7) to withdraw requests in cases provided for in the law;*
- 8) to get an affidavit confirming the registration of the his/her complaint and the initiation of a criminal investigation or a copy of the order refusing to initiate a criminal investigation;*
- 9) to contest a refusal to initiate a criminal investigation within 10 days of the receipt of a copy of the respective order and to review the materials supporting the order;*
- 10) to be protected from actions prohibited by law in the manner provided for protecting persons participating in a criminal proceeding;*
- 11) to be assisted by an attorney of his/her choosing during procedures involving his/her participation.*
- 12) to contact a mediator, as provided by law.*

**(4)** *The victim of an especially severe or an exceptionally severe crime, the victim of torture, inhumane or degrading treatments, irrespective of whether or not he/she is acknowledged as an injured party or a civil party shall also have the following rights:*

- 1) to have access to an attorney during the entire criminal proceeding like the other parties in the proceeding;*
- 2) to be assisted, in line with the law, by a court-appointed attorney to*



*provide the legal assistance guaranteed by the state if unable to afford an attorney;*

*3) to be accompanied in addition to his/her attorney by a confidant during all proceedings, including closed hearings;*

*4) to obtain a copy of the court's judgment on the recovery of material damage caused by the crime.*

*(5) A victim immediately upon being identified shall avail, in line with the law, of the right to protection and compensation, as well as of the right to file a request for application of protection measures.*

*(5<sup>1</sup>) The victim of torture, inhumane or degrading treatment shall be subjected to mental or physical expert examination.*

*(6) Should a state enterprise, institution, organization or an enterprise, institution, organization in which the state has a share, act as a victim, they shall not have the right to withdraw a complaint.*

*(7) abrogated*

*(8) A victim shall be obliged:*

*1) to appear when summoned by the criminal investigative body or the court and to provide explanations at the request of these bodies, except for victims of trafficking in human beings;*

*2) at the request of the criminal investigative body, to submit objects, documents and other available sources of evidence as well as samples for comparative investigation;*

*3) at the request of the criminal investigative body, to allow a medical examination if he/she complains about physical damage caused by the crime;*

*4) to obey all legal orders of the representative of the body that will settle his/her complaint or those of the chairperson of the hearing;*

*5) to behave in an orderly fashion during the court hearing and not to leave the courtroom without the permission of the chairperson of the hearing.*

**(9)** *A victim shall also have other rights and obligations provided by this Code.*

**(10)** *A victim exercises his/her rights and performs his/her obligations personally or if allowed by the law, through a representative. Should the victim be a juvenile or a person in a state of irresponsibility, his/her rights shall be exercised by his/her legal representatives in the manner duly set out in this Code. The rights of the deceased victim shall be taken over by his/her successors.*

**(11)** *A victim shall be examined under the conditions set hereunder for examining witnesses. Any juvenile victim under the age of 14 shall be examined in line with art. 110<sup>1</sup> in criminal cases related to crimes of a sexual character, trafficking children or domestic violence, as well as in other cases where the interests of justice or juvenile require so.*

### **Article 59. Injured Party**

**(1)** *An injured party is an individual or a legal entity that has suffered moral, physical or material damage as a result of a crime acknowledged as such in line with the law and upon consent of the victim. A juvenile who has suffered damage as a result of a crime shall be considered to be an injured party without his/her consent.*

**(2)** *The acknowledgement as an injured party shall be confirmed by an order of a criminal investigative body immediately upon establishing the reasons for such a procedural status.*

**(3)** *If after the acknowledgement of a person as an injured party circumstances are discovered that confirm the absence of any damage caused, the criminal investigative body shall discontinue in a reasoned order the participation of this person as an injured party in the respective proceeding.*

### **Article 60. Rights and Obligations of an Injured Party**

**(1)** *An injured party shall have the following rights:*

- 1) to know the essence of the accusation;*
- 2) to make statements and provide explanations;*
- 3) to submit documents and other sources of evidence as part of the criminal case to be presented in the hearing;*
- 4) to request the recusal of the person conducting the criminal investigation, of the judge, prosecutor, expert, interpreter, translator or court secretary;*
- 5) to object to actions of the criminal investigative body or of the court and to request that his/her objections be included in the transcript of the respective action;*
- 6) to review all the transcripts of the procedural actions he/she participated in and to request their completion or the inclusion of his/her objections in the respective transcript;*
- 7) to review the materials in the criminal case file as of the moment of completion of the criminal investigation and to copy out any information from the case file;*
- 8) to participate in the hearing, including in the examination of case materials;*
- 9) to speak during the judicial arguments about the damage caused;*
- 10) to be informed by the criminal investigative office or, as the case may be, by the prosecutor about all decisions that are related to his/her rights and interests, to get free of charge upon his/her request copies of these decisions and of a decision to terminate or dismiss the respective case or to refuse to initiate a criminal investigation and a copy of the sentence, decision or any other court's final judgment;*
- 11) to file complaints about the actions and decisions of the criminal investigative body and to contest the judgment of the court related to the damage caused;*

12) to withdraw complaints he/she or his/her representative filed including complaints about actions committed against him/her prohibited by law;  
12<sup>1</sup>) to contact a mediator, as provided by law;  
13) to reconcile with the suspect/accused/defendant as provided for in the law;  
14) to object to complaints of other participants in the proceeding brought to his/her attention by the criminal investigative body or learned about in other circumstances;  
15) to participate in the case hearing under ordinary means of appeal;  
15<sup>1</sup>) to contest court judgments;  
16) to be compensated for expenses incurred in the criminal case and to get redress for damages caused as a result of any illegal actions of the criminal investigative body;  
17) to have goods seized by the criminal investigative body as sources of evidence or goods submitted personally and that belong to him/her that were seized from the person who committed the action prohibited by criminal law returned and to receive the originals of any documents seized that belong to him/her;  
18) to be represented by an attorney of his/her choosing and if unable to afford an attorney, to be assisted, in line with the law, by an attorney providing the legal assistance guaranteed by the state.  
19) to notify the higher-level prosecutor or, where appropriate, the court about the violation of the reasonable time.  
**(1<sup>1</sup>)** A person recognized as an injured party in the crimes of torture, inhuman or degrading treatment shall be subject to the mental or physical expert examination, unless he/she had been subjected to an expert examination under conditions of article 58.

**(2)** The injured party shall be obliged:

- 1) to appear when summoned by the criminal investigative body or by the court;
- 2) to make statements at the request of the criminal investigative body or the court;
- 3) at the request of the criminal investigative body, to submit objects, documents and other available sources of evidence and samples for a comparative investigation;
- 4) at the request of the criminal investigative body, to allow a corporal examination if a severe, especially severe or exceptionally severe crime was committed against him/her;
- 5) at the request of the criminal investigative body, to undergo an outpatient medical examination to verify the capacity to understand the circumstances important for the case and to make just statements on such circumstances, provided that there are valid grounds to question them;
- 6) to obey the legal orders of the representative of the criminal investigative body and of the chairperson of the court hearing;
- 7) to behave in an orderly fashion during the court hearing.

**(3)** An injured party shall also have other rights and obligations provided by this Code. An injured party may renounce his/her status as such at any time during a criminal proceeding.

**(4)** An injured party shall exercise his/her rights and perform his/her obligations personally or if allowed by the law through representatives. Should an injured party be a juvenile or a person in a state of irresponsibility, his/her

*rights shall be exercised by his/her legal representatives in the manner duly set out in this Code.*

*(4<sup>1</sup>) Corporal examination and sampling of body fluids or other biological samples from an injured party may be carried out without his/her consent only based on the authorization of the investigative judge. These actions may not be carried out in places or under circumstances where there is a risk of traumatization of the injured party or a risk of human rights violation.*

*(5) An injured party shall be examined under the conditions set hereunder for examining witnesses. A juvenile injured party aged under 14 shall be examined in line with art. 110<sup>1</sup> in criminal cases related to crimes of a sexual character, trafficking children or domestic violence, as well as in other cases where the interests of justice or juvenile require so.*

The aforementioned criminal procedure norms, along with general provisions that are characteristic of any person who is a victim or injured party in the criminal proceeding, contain more specific provisions related to victims or injured parties on certain categories of offenses, including offenses of torture, inhuman or degrading treatment, grave, particularly grave or exceptionally grave crimes, some exceptions for victims of trafficking in human beings, etc. Specifications and exceptions to the general norms that provide additional safeguards to

specific categories of victim / injured party in the trial make it possible to take over this formulation also to the benefit of the victim / injured party in cases of sexual offenses. The use of this opportunity, dictated by the specific needs of victims of sexual offenses, due to the particularly sensitive nature of this category of crimes is also encouraged by the norms of international treaties relevant to the subject. In this regard, the **Convention on preventing and combating violence against women and domestic violence** expressly states in several articles.

#### **Article 4. Fundamental rights, equality and non-discrimination**

*4. Special measures that are necessary to prevent and protect women from gender-based violence shall not be considered discrimination under the terms of this Convention.*

#### **Article 18. General obligations**

*2. Parties shall take the necessary legislative or other measures, in accordance with internal law, to ensure that there are appropriate mechanisms to provide for effective cooperation between all relevant state agencies, including the judiciary, public prosecutors, law enforcement agencies, local and regional authorities as well as non-governmental organisations and other relevant organisations and entities, in protecting and supporting victims and witnesses of all forms of violence covered by the scope of this Convention, including by referring to general and specialist support services as detailed in Articles 20 and 22 of this Convention.*

3. Parties shall ensure that measures taken pursuant to this chapter shall:
- shall focus on the human rights and safety of the victim;
  - address the specific needs of vulnerable persons, including child victims, and be made available to them.
4. The provision of services shall not depend on the victim's willingness to press charges or testify against any perpetrator.

#### **Article 19. Information**

*Parties shall take the necessary legislative or other measures to ensure that victims receive adequate and timely information on available support services and legal measures in a language they understand.*

#### **Article 25. Support for victims of sexual violence**

*Parties shall take the necessary legislative or other measures to provide for the setting up of appropriate, easily accessible rape crisis or sexual violence referral centres for victims in sufficient numbers to provide for medical and forensic examination, trauma support and counselling for victims.*

#### **Article 56. Protection measures**

1. The Parties shall take legislative or other measures necessary to protect victims' rights and interests ... at all stages of investigations and judicial proceedings, in particular (by):
- c. to inform them, under the conditions laid down by national law, of their rights, of the services they have available and of the trajectory of their complaint, the accusations, the general progress of the investigation or the proceedings, their role in them, as well as the outcome of their case;
  - e. providing victims with adequate support services so that their rights and interests are properly presented and taken into account;
  - f. ensuring that measures can be taken to protect the victim's privacy and image; ... etc.

At the same time, the **Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse** includes specifications on rights, safeguards and interests for victims.

#### **Article 14. Assistance to victims**

*Each Party shall take the necessary legislative or other measures to assist victims, in the short and long term, in their physical and psycho-social recovery..*

*When the parents or persons who have care of the child are involved in his or her sexual exploitation or sexual abuse, the intervention, shall include:*

- *the possibility of removing the alleged perpetrator;*
- *the possibility of removing the victim from his or her family environment. The conditions and duration of such removal shall be determined in accordance with the best interests of the child.*

*4. Each Party shall take the necessary legislative or other measures to ensure that the persons who are close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care.*

### **Article 31. General measures of protection**

- 1. Each Party shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and criminal proceedings, in particular by:*
- a) informing them of their rights and the services at their disposal and, unless they do not wish to receive such information, the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein as well as the outcome of their cases;*
  - d) providing them with appropriate support services so that their rights and interests are duly presented and taken into account; etc.*

International norms, as we may see, prioritize the need of a pro-active role of state competent bodies in informing the victims of the offense / injured party about the assault or sexual abuse case, about their rights and actions taken to obtain protection and appropriate recovery within the criminal procedure, while acting, within the limits of their competence, and refer to other institutions for the purpose of assistance and counseling.

Even after the amendments adopted to increase the degree of protection of victims of offense, the national criminal legislation does not contain clear norms addressed to victims of sexual offenses, but still provides conditions for additional rights based on the details of these offenses, including: the right to psychological and medical assistance in criminal proceedings, the provision of more guarantees for protection and rehabilitation under intimate conditions. The legislation does not contain any provisions to develop the “effective cooperation mechanism between relevant state agencies, including the judiciary, prosecutors, governmental law enforcement agencies, local and regional authorities, and non-governmental organizations and other relevant organizations and entities in the field of protection and support for victims,

including by referring to general and specialized support services. “ Even though there is not yet a network of centers for victims of rape or sexual violence in line with the requirements of international standards, at least some support services for victims of domestic violence, especially with the help of the associative sector are providing assistance to victims of rape or other abuse and sexual violence, where possible and as necessary, according to an individual schedule, in privacy and with respect for the right to privacy to able to overcome the crisis situation.

At the same time, it should be noted that in some cases the current criminal procedural norms prescribes a passive role and a reactive intervention role to the prosecution bodies and the court in response to the request of the interested person. Given a high degree of legal nihilism amongst the population this approach does not positively contribute to increasing the level of protection and assistance of victims / injured parties to the extent required by the specific circumstances of the case. In this regard, the fact that some provisions regarding the rights and obligations of the victim in the criminal proceedings are formulated in an ambiguous way, allows competent authorities not to fulfill those.

An example in this regard may be the norm of art. 58, par. (3), point 4) Criminal Procedure Code, according to which the victim has the right to be informed, upon request, by the criminal investigation body, the prosecutor or, as appropriate, by the court on the settlement of his complaint, about all decisions taken regarding his / her rights and interests to receive copies of them free of charge upon request, as well as on the decision to terminate or classify the criminal proceedings in the respective case and not to initiate the criminal prosecution, the copy of the sentence, decision or other final judgment. It is obvious that the term “upon request” indicated here has nothing in common with the notification provided by art. 262 Criminal Procedure Code, which deals with terms such as “complaint” or “denunciation”. Thus, when the victim usually does not know that he / she needs to ask for information or to receive any documents, the criminal investigation body or the court will always have an “excuse” for failing to honor this right of victim - the latter did not ask / request this.

Also, in the art. 58, par. (3) p. (8) CPC it is mentioned that the victim is entitled to receive a certificate of registration of her application and the commencement of criminal prosecution or a copy of the order not to start criminal investigation. At the same time, according to art.

274 of CPC on the adoption of the order for the initiation of criminal prosecution, the criminal investigation body or the prosecutor informs the person who submitted the complaint. If the prosecutor refuses to start the criminal investigation, he/she confirms the fact by a reasoned ordinance and informs the person who submitted the complaint about this, within the shortest possible time but no longer than 15 days.

So again there is a wording that ultimately leads to an interpretation of the need for a further request from the victim / injured party in order to obtain the decisions that are taken concerning his / her rights and interests on the case.

**Conclusion.** From the point of view of ensuring the compatibility of criminal procedural legislation with the letter and spirit of relevant international treaties, we welcome the amendment and supplementing of Articles 58, 60 of the Criminal Procedure Code in order to provide additional guarantees to the injured party / victim in relation to sexual offenses cases and requirements dictated by the specificity of these crimes. In order to ensure the compliance of the national legal framework with international standards in the field it is proposed:

a) supplementing art. 58 of the Criminal Procedure Code with a new paragraph (5<sup>2</sup>), with the following wording:

*“(5<sup>2</sup>) Victim of offenses concerning sexual life also has the following rights:  
1) to give explanations in friendly conditions, in the absence of the suspected person, to refuse confrontation with the person suspected of committing the offense;  
2) be assisted, under the law, by a lawyer who grants state-guaranteed legal assistance if he does not have money to pay a lawyer;  
3) be accompanied by a trusted person, along with his attorney, to all inquiries, including closed sessions;  
4) to be assured the right to privacy and the protection of personal image;  
5) be referred to, in the course of criminal investigation and judicial review procedures, to medical and forensic care services, post-traumatic psychological assistance and physical and psychosocial recovery counseling.”*

b) supplementing art. 60 of the Criminal Procedure Code with a new paragraph (12), with the following wording:

*“(1<sup>2</sup>) The injured party recognized in offenses concerning sexual life shall additionally have the following rights:*

- 1) be referred to in the course of criminal prosecution and judicial examination procedures for medical and forensic care, post-traumatic psychological assistance and counseling for physical and psychosocial recovery;*
- 2) be assisted, under the law, by a lawyer who grants state-guaranteed legal assistance if he does not have money to pay a lawyer;*
- 3) be accompanied by a trusted person, along with his attorney, to all inquiries, including closed sessions;*
- 4) be heard in friendly conditions, in the absence of the suspect, the accused, the defendant, giving him the opportunity to get acquainted with statements and to ask questions through his defense;*
- 5) refuse to confront the suspect, the accused, the defendant;*
- 6) be assured of the right to privacy and the protection of personal image “.*

- ◆ In accordance with art. 111 of the Criminal Procedure Code<sup>48</sup>, the injured party shall be heard regarding the criminal offense and other circumstances relevant to the case. Statements and hearing of the injured party shall be made in accordance with provisions related to statements and hearing of witnesses, and shall be applied accordingly. In some cases, when the intimate life of the injured party may be harmed, it is forbidden for the defendant accused of having committed a sexual offense and his defender to provide evidence of the alleged character or personal history of the victim, unless the court grants this permission.

The Criminal Procedure Legislation regulates the hearing of the witness and injured parties under special conditions. Thus, according to art. 109, paragraph (3) of the CPC, in order to reduce or exclude subjecting the witness to a clear danger or to reduce his revictimization, the prosecutor may request that the investigating judge hears the victim, making sure that the suspect, accused, his defender, injured party and the prosecutor may ask questions to the witness heard. If the minor witness under the age of 14 is to be heard in criminal cases concerning sexual offenses, child trafficking or domestic violence, as well as in other cases where the interests of the juvenile or justice require it, the prosecutor shall request his/her hearing under the conditions of art. 110<sup>1</sup>.

In accordance with art. 110<sup>1</sup> CPP, the investigating judge will conduct an interview of the minor witness aged up to 14 years in criminal cases involving sexual offenses, trafficking in children or domestic violence, as well as in other cases which is the interest of justice or the minor. In special spaces equipped with audio / video recording equipment, through an interviewer. The interview with the minor will take place during a short period of time. Participants in the interview will ask questions to the investigative judge, who will send them to the interviewer verbally, via technical devices or in writing during a break. The interview with minor witness must be done in such a way as to avoid any negative effect on his or her mental condition. The statements of the minor witness under the terms of this article shall be recorded by audio / video means and shall be written in full in a report drawn up in accordance with Art. 260 and 261. A copy of the audio / video recording and the minutes of the hearing shall be attached to the criminal file. The repeated interview with of the minor should be avoided as far as possible. The reading of statements filed in the course of the criminal investigation, as well as the reproduction of their records, shall be made, according to art. 371 CPC, when the witness was heard in accordance with art. 109 and 110<sup>1</sup>. The reading of these statements in court and the reproduction of the audio / video record will replace the personal hearing, including in order

<sup>48</sup> Criminal Procedure Code of the Republic of Moldova, no. 122-XV of 14 March 2003. (Official Gazette of the Republic of Moldova, 2013, No. 248-251, article 699)



to reduce possible trauma to the person, unless the court considers it necessary to file statements in a court hearing.

The above norms seek to ensure friendly conditions for the victim or juvenile witness involved in formal proceedings to investigate offenses and are essentially an exceptional tool

to protect their rights and interests in criminal proceedings.

The **Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse** as well prescribes protection measures and interviewing conditions for the child.

### **Article 31. General measures of protection**

*1. Each Party shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and criminal proceedings, in particular by:*  
*g) ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided, unless the competent authorities establish otherwise in the best interests of the child or when the investigations or proceedings require such contact.*

### **Article 35. Interviews with the child**

*1. Each Party shall take the necessary legislative or other measures to ensure that:*  
*a. interviews with the child take place without unjustified delay after the facts have been reported to the competent authorities;*  
*b. interviews with the child take place, where necessary, in premises designed or adapted for this purpose;*  
*c. interviews with the child are carried out by professionals trained for this purpose;*  
*d. the same persons, if possible and where appropriate, conduct all interviews with the child;*  
*e. the number of interviews is as limited as possible and in so far as strictly necessary for the purpose of criminal proceedings;*

*2. Each Party shall take the necessary legislative or other measures to ensure that all interviews with the victim or, where appropriate, those with a child witness may be videotaped and that these recorded interviews may be accepted as evidence during the court proceedings, in accordance with the rules laid down in its internal legislation.*

The aforementioned provisions of the international treaty allow us to conclude in principle to what extent they correspond to the rules of the national criminal procedure legislation, especially the provisions of art. 110<sup>1</sup> of the Criminal Procedure Code with international standards in the field. The difference lies in the fact that art. 110<sup>1</sup> and other relevant rules of the CPC refer to interviewing a minor up to 14 years of age, while, according to Art. 3 of the Lanzarote Convention, the term child within the meaning

of that Convention means any person below the age of 18. Thus, the norms of the international treaty, i.e. the safeguards provided for victims of sexual offenses are applicable to children until they reach the age of 18. Therefore, in order to ensure the compatibility of the national norm of criminal procedure with international standards in the field, it is necessary to extend the age of persons interviewed under special conditions to the age of 18 years, according to the procedure provided by art. 110<sup>1</sup> of the CPC.

At the same time, we should specify that the current practice of applying art. 110<sup>1</sup> CPC admits as well the participation of the suspect / accused in the special hearing of the witness / injured party. This is due to the practice of interpreting the phrase “other persons” in art. 110<sup>1</sup>, paragraph (3) of the Criminal Procedure Code. For the above mentioned reasons, the judge conducts the interview of the person according to art. 110<sup>1</sup> CPC only if the perpetrator is present in the viewing room. In this way, the essence and purpose of interviewing the person under special conditions is distorted, while the purpose of these conditions is not to allow revictimization. It also harms the provisions of para. (5), Art. 110<sup>1</sup> CPC, which stipulate that a person’s interview must be conducted in such a

way as to avoid any negative effect on his / her mental state. Especially since the interviewer informs the minor to be heard about the people who are present in the viewing room. We consider it necessary to amend and supplement paragraph 3 of Art. 110<sup>1</sup> of the CPC in order to exclude the current practice of admitting the suspect / accused to the interview of the witness / minor injured party in special circumstances.

According to art. 3 of the **Istanbul Convention**, the term victim includes any natural person subjected to any form of violence under the Convention, including girls under the age of 18. The obligations of parties and the protection measures are laid down in Articles 18 and 56 of the Istanbul Convention.

#### **Article 18. General obligations**

*3. Parties shall ensure that measures taken pursuant to this chapter shall focus on:*

- *...human rights and victim safety;*
- *aim at avoiding secondary victimization*

#### **Article 56. Measures of protection**

*1. Parties shall take the necessary legislative or other measures to protect the rights and interests of victims ... at all stages of investigations and judicial proceedings, in particular (by):*

- g. ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible;*
- i. enabling victims to testify, according to the rules provided by their internal law, in the courtroom without being present or at least without the presence of the alleged perpetrator, notably through the use of appropriate communication technologies, where available.*

The text of these norms extends the friendly interviewing procedure to adult victims of sexual offenses as well.

Therefore, in order to have compatibility of criminal procedural rules with international standards, it is necessary to amend and supplement the Criminal Procedure Code so as to provide for a distinct way of interviewing the injured victim / party in relation to sexual offenses. This will act in the spirit of international standards, according to which any special

measures that are necessary to protect women from gender violence will not be considered discriminatory.

**Conclusion.** The provision of art. 110<sup>1</sup> of the Criminal Procedure Code in so far as it relates to the age of the minor heard under special conditions does not comply with the requirements of the Lanzarote Convention. In order to ensure the compatibility of criminal procedural rules with international standards in the field, it is necessary to extend the age of persons

interviewed under special conditions to 18 years, according to the procedure provided by art. 110<sup>1</sup> of the Criminal Procedure Code. At the same time, it is necessary to review the wording of art. 110<sup>1</sup> of the Criminal Procedure Code to exclude the current practice of allowing the suspect / accused to the hearing of the witness / injured party in special circumstances.

In this regard, we consider appropriate:

- to supplement the first sentence of paragraph (3), Art. 110<sup>1</sup> of the Criminal Procedure Code with the phrase “with the exception of the suspect / accused”.

Criminal procedure legislation does not contain provisions on how to interview the injured party in the criminal proceeding related to sexual offenses under conditions that exclude the alleged aggressor from being present and avoid

secondary victimization. In order to ensure the compliance of the national legal framework with international standards in the field and to strengthen the protection of the victim of sexual offenses, it is necessary to make amendments to the Criminal Procedure Code in order to regulate a distinct interviewing procedure in friendly conditions of the injured party in relation to sexual offenses. One way of removing this loophole would be to operate the additions to art. 111 and art. 371 of the Criminal Procedure Code of the Republic of Moldova.

- ♦ Increased attention in these international treaties is given to work with perpetrators as a victim’s safety measure and as a remedy against re-offending. In this regard, the **Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse** contains prescriptions in three articles.

#### **Article 15. General principles**

*1. Each Party shall ensure or promote, in accordance with its internal law, effective intervention programmes or measures for the persons referred to in Article 16, paragraphs 1 and 2, with a view to preventing and minimising the risks of repeated offences of a sexual nature against children. Such programmes or measures shall be accessible at any time during the proceedings, inside and outside prison, according to the conditions laid down in internal law.*

#### **Article 16. Recipients of intervention programmes and measures**

*Each Party shall ensure, in accordance with its internal law, that persons subject to criminal proceedings for any of the offences established in accordance with this Convention may have access to the programmes or measures mentioned in Article 15, paragraph 1, under conditions which are neither detrimental nor contrary to the rights of the defence and to the requirements of a fair and impartial trial, and particularly with due respect for the rules governing the principle of the presumption of innocence.*

*Each Party shall ensure, in accordance with its internal law, that persons convicted of any of the offences established in accordance with this Convention may have access to the programmes or measures mentioned in Article 15, paragraph 1.*

#### **Article 31. General measures of protection**

*1. Each Party shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and criminal proceedings, in particular by: f. providing for their safety, as well as that of their families and witnesses on their behalf, from intimidation, retaliation and repeat victimization...*

**The Convention on preventing and combating violence against women and domestic violence** tackles the same topic in four articles.

**Article 16. Preventive intervention and treatment programmes**

2. Parties shall take the necessary legislative or other measures to set up or support treatment programmes aimed at preventing perpetrators, in particular sex offenders, from re-offending.

**Article 50. Immediate response, prevention and protection**

1. Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies respond to all forms of violence covered by the scope of this Convention promptly and appropriately by offering adequate and immediate protection to victims.

**Article 53. Restraining or protection orders**

1. Parties shall take the necessary legislative or other measures to ensure that appropriate restraining or protection orders are available to victims of all forms of violence covered by the scope of this Convention.

**Article 56. Measures of protection**

1. Parties shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by:

a. providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimisation;

A mechanism for the protection of victims of domestic violence is provided in the national legislation. This mechanism sets out the conditions and procedure for the implementation of victim protection measures, the involvement of perpetrators in re-socialization programs and probation programs for the correction of aggressive behavior.

It should be noted that in the Istanbul Convention, statements such as “...to provide victims of all forms of violence covered by the scope of this Convention ...” are frequently used, including in relation to the application of protection measures. This implies the need to extend this protection mechanism to the victims of sexual violence, which also falls within the scope of the Convention.

We consider that changes and additions to the legislation are necessary to ensure the im-

plementation of counseling measures for sex offenders at the same time as criminal punishment. This would be an important step in the pro-active intervention, including preventive actions. Nowadays, it is mainly about reactive measures of sanctioning committed facts and there is almost no action towards changing the behavior of the perpetrator.

**Conclusion.** The national legislative framework provides special protection measures for victims of domestic violence only. Victims of sexual violence are protected under general conditions, despite the fact that they are also within the scope of the Istanbul Convention. In order to increase the safety guarantees of victims of sexual offenses in accordance with the requirements of international treaties, we welcome supplementing Chapter X of the Criminal Code (Safeguards) with norms to ensure

that probation measures are applied to convicts in cases of sexual violence, regardless whether it is a custodial or non-custodial punishment. At the same time, it is necessary to supplement the Criminal Procedure Code with rules regulating conditions and the way of applying the probation measures to convicts in a case of

sexual violence, as well as relevant protection measures in order to eliminate any attempts of intimidation, corruption or other forms of pressure on the victim of sexual violence during the criminal investigation and judicial examination of the criminal case.



# IV.

## SUMMARY OF RECOMMENDATIONS





As a plenipotentiary subject of international law, the Republic of Moldova must be and is concerned with the modernization of the national legal framework on the implementation of international standards in order to ensure a high level of protection of human rights and fundamental freedoms.

National legislation establishes criminal liability for actions which have the violation of person's freedom and inviolability<sup>49</sup> as its object. The analysis of the compatibility of the national legislative framework regarding sex offenses has found that the Moldovan legislation in this field largely corresponds to international standards to which the Republic of Moldova is party. However, additional efforts are needed to bring the national criminal legislative framework related to sexual offenses in full

compliance with relevant international treaties, taking into account the ongoing process of ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence. The adjustment of the national legal framework to international standards is important to realize not only after the ratification of international treaties, but also and perhaps even more appropriate - in the preparation for ratification in strict compliance with the spirit of constitutional norms<sup>50</sup>, according to which the entry into force of an international treaty must be preceded by the revision of national legislation.

In light of the above, it is proposed to examine the opportunity of reviewing some of the norms of the Criminal Code of the Republic of Moldova.

♦ SPECIAL PART. CHAPTER I  
(CRIMES AGAINST PEACE AND HUMAN SECURITY, WAR CRIMES)

**Article 135<sup>1</sup> . Crimes against humanity**

*Amendment of paragraph (1), let. e) of this norm by:*

- *replacing the current term sexual exploitation with the original term of sexual slavery from the ICC Statute;*
- *the exclusion of the term coercion to prostitution, given the presence in this norm of trafficking in human beings as a distinct crime at lit. a) of the same paragraph;*
- *inclusion of the definition of sexual slavery in the Criminal Code, in line with international norms.*

**Article 137. War crimes against persons.**

*Amendment of paragraph (3), let. c) of this norm by:*

- *replacing the current term sexual exploitation with the original term of sexual slavery from the ICC Statute;*
- *inclusion in the Criminal Code of the definition of coercion to prostitution, taking into account as well the elements of trafficking in human beings and the trafficking of children, provided by the national legislation in this area field.*

<sup>49</sup> Criminal Code of the RM, Chapter IV

<sup>50</sup> Constitution of the Republic of Moldova, art. 8

## ♦ CHAPTER II (OFFENSES AGAINST LIFE AND PERSONAL HEALTH)

### **Article 159. Illegal induction of abortion**

Amendments are as follows:

- in the provision of paragraph 1, art. 159 of Criminal Code, after the word committed it is proposed to include the phrase **with the informed consent of the pregnant woman;**
- it is proposed to supplement art. 159 of Criminal Code with a new paragraph - paragraph (1<sup>1</sup>) in the following wording:

**(1<sup>1</sup>) Termination of pregnancy, under any conditions and by any means, without the informed consent of the pregnant woman shall be punished by imprisonment of up to 5 years with the deprivation of the right to hold certain positions or to exercise a certain activity for up to 3 years;**

- in the provision of art. 159, par. (2) Criminal Code the phrase The same action is proposed to be substituted by the phrase **Actions provided under para. (1) or para. (1<sup>1</sup>).**

## ♦ CHAPTER IV. (SEXUAL OFFENSES)

- ♦ Amending the wording of the norm on rape provided for in **Article 171 of the Criminal Code**. The provision of this criminal norm should be reviewed based on the idea of incriminating the nonconsensual penetration, so that the content of this provision, apart from the sexual intercourse, as it is currently provided, also includes oral or anal intercourse, whether it is a heterosexual or homosexual act. The norm on sexual offense should also include vaginal or anal intercourse, made with any part of the human body or with objects.

Regarding ways of disregarding the will of the victim, the provision of the criminal norm must stipulate that in the end physical or psychological coercion can be applied not only against the potential victim but other persons as well. For the typical offense one should establish a sanction capable of assigning it to the category of serious crimes, according to the spirit of the Istanbul Convention.

The following version of Article 171 of the Criminal Code is proposed as a working variant.

### **Article 171. Rape**

**(1) Rape, namely the non consensual or following a vitiated consent sexual intercourse of vaginal, anal or oral penetration of another person with any other part of the body or object is punishable by imprisonment from 3 to 7 years.**

**(2) Rape:**

- a) committed by a person who previously committed an act provided in article 171-175<sup>1</sup> of the Criminal Code;*
  - b) knowingly committed against a minor;*
  - c) knowingly committed against a pregnant woman;*
  - d) committed against a family member;*
  - e) committed by two or more persons;*
  - f) accompanied by intentional contamination with a sexually transmitted disease;*
  - g) committed with strangulation or with extreme cruelty, as well as for sadistic reasons*
- is punishable by imprisonment from 7 to 12 years.*

**(3) Rape:**

- a) against a person in charge, under the guardianship, protection, education or treatment of the perpetrator;*
  - b) against a person who is certainly known not to have reached the age of 14;*
  - c) accompanied by the intentional contamination with AIDS;*
  - d) that caused by imprudence a serious injury to bodily integrity or health;*
  - e) that caused by imprudence the death of the victim;*
- shall be punished by imprisonment from 10 to 20 years or by life imprisonment.*

For the sake of clarity in the application of the criminal norm and the qualification of rape, it is proposed to include new terms in the Criminal

Code. A working version of Article 131<sup>2</sup> is proposed.

**Article 131<sup>2</sup>. Non-consensual sexual acts or actions  
or with vitiated consent**

**(1)** *Sexual intercourse is the action of vaginal, anal or oral sexual penetration of the body of another person with any body part or object.*

**(2)** *Any sexual intercourse or sexual actions committed in the absence of the partner's voluntary consent, which may be accompanied by circumstances involving: physical or psychological coercion, deception; surprise; taking advantage of the person's inability to defend herself or to express her will; violence or threat of violence against the victim or against another person shall be considered nonconsensual.*

**(3)** *Sexual intercourse or sexual activity with respect to a person under the age of 15 shall be deemed to have been committed with vitiated consent. “*

- ♦ To adopt the norm related to the offense set forth in **Article 172 of the Criminal Code** in the new wording. The revised norm must estab-

lish criminal liability for nonconsensual sexual intercourse other than rape. It is also necessary to foresee that measures of physical or men-

tal constraint can be applied not only against the potential victim but also to other persons. For the typical offense one should establish a sanction that would assign it to the category

of serious crimes, according to the spirit of the Istanbul Convention.  
The following version of Article 172 of the Criminal Code is proposed as a working variant.

### **Article 172. Violent sexual actions**

**(1)** *Nonconsensual sexual actions or upon a vitiated consent regarding the person, other than rape is punishable by imprisonment up to 5 years.*

**(2)** *The same actions:*

*a) committed by a person who previously committed an act provided at art. 171-175<sup>1</sup> Criminal Code;*

*b) knowingly committed against a minor;*

*c) knowingly committed against a pregnant woman;*

*d) committed against a family member;*

*e) committed by two or more persons,*

*f) committed by strangulation with extreme cruelty, as well as for sadistic reasons*

*g) committed by home intrusion or any other premise*

*h) committed with the use of the weapon or other objects used as a weapon; shall be punished by imprisonment from 3 to 7 years.*

**(3)** *Actions provided in par. (1) or (2), which were committed:*

*a) against a person who is certainly known not to have reached the age of 14;*  
*a<sup>1</sup>) against a person in charge, under the guardianship, protection, education or treatment of the perpetrator;*

*b) that caused by imprudence a serious injury to bodily integrity or health;*

*c) that caused by imprudence the death of the victim;*

*shall be punished by imprisonment from 10 to 20 years or by life imprisonment.*

- ♦ To approve the norm covering the offense provided by **Article 173 Criminal Code** in a new wording. The following wording is suggested as a working version.

### **Article 173. Sexual harassment**

*Sexual harassment, namely the manifestation of a physical, verbal or non-verbal behavior to determine a person to unwanted sexual actions that creates a hostile, degrading, humiliating, discriminatory which injures the dignity of the person shall be punished...*

- ♦ To adopt the norm covering the offense referred to in **Article 174, (1) Criminal Code** in a new wording. The revised wording should include aggravating circumstances for the facts committed by persons under whose care, protection, education, guardianship or treatment the minor is, as well as the action committed by two or more persons. The following wording is suggested as a working version:

**Article 174. Sexual intercourse with a person who has not reached the age of 16**

*(1) The sexual intercourse other than rape against a person who is certainly known not to have reached the age of 16, shall be punished..*

- ♦ To adopt the norm covering the offense referred to in **Article 175 Criminal Code** in a new wording. At the same time, it is suggested to examine the opportunity of adding a new paragraph to this norm – para (2) similar to art. 174, par (2) Criminal Code. The following wording is suggested as a working version for para. (1) below:

**Article 175. Sexual corruption of a minor**

*Intentional engagement in sexual actions against a person who is certainly known not to have reached the age of 16 years, consisting of exposure, indecent touch, obscene or cynical discussion with the victim about sexual intercourse, determination of the victim to attend or participate in pornographic performances, provide pornographic material to the victim is punished ...*

- ♦ To approve the norm covering the offense provided by **Article 175<sup>1</sup> Criminal Code** in a new wording. The following wording is suggested as a working version.

**Article 175<sup>1</sup>. Solicitation a minor for sexual purposes**

*(1) Proposal, persuasion, manipulation, threat, promise to provide benefits in any way, including through information technologies or electronic communications, in order to establish a meeting with a minor, to the purpose of committing against it any sexual offence, if these actions were followed by material facts leading to such a meeting, shall be punished...*

### ◆ PROCEDURAL ELEMENTS

In order to ensure the conformity of the national legal framework with international standards in the field, it is necessary to make some amendments to the current wording of certain procedural rules.

- ◆ Concerning the failure to apply parties' reconciliation to sexual offenses:
  - in the provision related to Article 276 (1) of the Criminal Procedure Code it is proposed to exclude word "173", thus removing the current condition of starting the criminal investigation for sexual harassment solely upon the preliminary complaint of the victim of offense;
  - in the provision of **art. 109, par. (1)** of the Criminal Code, it is proposed to replace the phrase **chapters II to VI with the phrase chapters II-III, V-VI**, and in para. (4) of this norm to exclude the word "**171-175**", thus excluding the applicability of reconciliation regarding cases of sexual offenses involving additional pressure on the victim / injured party.
- ◆ In order to provide additional procedural guarantees to the victim / injured party in relation to sexual offenses, it is proposed:
  - a) supplementing **art. 58** of the Criminal Procedure Code with paragraph 5<sup>2</sup> with the following wording:

*(5<sup>2</sup>) Victim of sexual offenses has the following rights:*

- 1) to give explanations under friendly conditions, in the absence of the suspect, to refuse the confrontation with the person suspected of committing the offense;*
- 2) be assisted, under the law, by a lawyer who provides state-guaranteed legal assistance if he does not have money to pay for the lawyer;*
- 3) be accompanied by a trusted person, along with her lawyer to all inquiries, including closed sessions;*
- 4) to be assured the right to privacy and protection of personal image;*
- 5) be referred to in the course of criminal prosecution and judicial examination procedures to health and forensic care services, post-traumatic psychological assistance, and counseling for physical and psychosocial recovery.*

b) supplementing **Article 60** of the Criminal Procedure Code with paragraph (1<sup>2</sup>) with the following wording:

*(1<sup>2</sup>) The injured party recognized in sexual offenses, additionally has the following rights:*

- 1) be referred to during criminal prosecution and judicial examination to health care and forensic services, post-traumatic psychological assistance and physical and psychosocial recovery counseling;*
- 2) be assisted, under the law, by a lawyer who provides state-guaranteed legal assistance if he does not have money to pay the lawyer;*
- 3) be accompanied by a trusted person, along with his attorney, to all inquiries, including closed sessions;*

4) *be heard on friendly terms, in the absence of the suspect, the accused, the defendant, giving the latter the opportunity to get acquainted with statements and to ask questions through his defense;*  
 5) *refuse to confront the suspect, the accused, the defendant;*  
 6) *be assured the right to privacy and the protection of personal image.*

- c) to exclude the words **“at request”** and **“upon request”** in art. 58, par. (3), point 4), and the words “at his request” in Art. 60, par. (3), point 4) of the Criminal Procedure Code, as well as to ensure the wording corroboration of art. 58, par. (3), point 8) Criminal Procedure Code with the relevant provisions of the criminal procedure law, including the text of art. 274 CPC.
- ♦ In order to ensure the friendly interview of the victim of sexual offenses, it is proposed:
    - amendment of the norm of **art. 110<sup>1</sup>** of the Criminal Procedure Code in so far as it relates to the age of the minor heard under special conditions by extending to 18 years the age of persons interviewed in accordance with the procedure laid down in Art. 110<sup>1</sup> of the Criminal Procedure Code;
    - completing the first sentence of paragraph (3), Art. 110<sup>1</sup> of the Criminal Procedure Code with the phrase **“except for the suspect / accused”**;
    - the operation of some amendments and additions to **Art. 111** of the Criminal Procedure Code, respectively in **Art. 371** of Criminal Procedure Code in order to regulate a distinct interviewing procedure in friendly conditions of the injured party regarding sexual offenses and admitting them as evidence without the need for a repeated hearing of the injured party at the interview.
  - ♦ In order to ensure the prevention and reduction of re-offending, as well as to increase the safety guarantees of victims of sexual offenses in accordance with the requirements of international treaties, it is proposed to:
    - supplement Chapter X of the Criminal Code (Safeguard Measures) with norms to ensure that probation measures are applied to convicts for sexual offenses whether it is a custodial or non-custodial punishment;
    - completing the Criminal Procedure Code with norms regulating the conditions and manner of applying relevant protection measures to eliminate any attempts to intimidate, corrupt or otherwise put pressure on the victim of sexual violence during the criminal investigation and judicial review of criminal cases.
- This Report has been drafted for the purpose of future use in the process of drafting proposals to amend criminal legislation on sexual offenses. At the same time, the draft law for amending and supplementing certain legislative acts may include proposals for *lex ferenda* and with reference to other legislative acts, which will allow the effective functioning of the mechanism of protection and rehabilitation of victims of sexual offenses.













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