

## XENOPHOBIA, HATE SPEECH AND INCITEMENT TO DISCRIMINATION IN MOLDOVA

Submission of the Promo-LEX Association

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Report submitted in the context of the fifth report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance for 44th Human Rights Council

January 30, 2020

**Suggested** List of Issues relating to xenophobia and hate speech against Unionist Romanians/Romanian speakers, xenophobia and hate speech against Muslims, Arabs and Refugees

**Promo-LEX Association**<sup>1</sup> is a non-governmental organization that aims to advance democracy in the Republic of Moldova, including in the Transnistrian region, by promoting and defending human rights, monitoring the democratic processes, and strengthening civil society.

Promo-LEX Association was established in 2002 and was registered at the Ministry of Justice of the Republic of Moldova on July 19, 2002. Registration number – 2278. Promo-LEX Association is a not-for-profit and politically independent organization. Promo-LEX Association holds the Certificate of Public Benefit. Promo-LEX Association is a national level organization and operates throughout the Republic of Moldova. Promo LEX has consultative status to ECOSOC since 2014.

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<sup>1</sup> <https://promolex.md/misiune/?lang=en>

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# 1 INTRODUCTION

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The Republic of Moldova is required to prohibit discrimination against persons on the basis of their race, colour and national origin in the enjoyment of all civil, political, economic, social and cultural rights guaranteed under the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) by virtue, respectively, of Article 2(1) of the ICCPR and Article 2(2) of the ICESCR.

In addition, Moldova is also required by Article 26 of the ICCPR to ensure that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground”, including on Discrimination on the basis of race, colour and national origin. The UN Committee on Economic, Social, and Cultural Rights (CESCR) has also stated that Article 2(2) of the ICESCR extends to a prohibition of discrimination on the basis of ethnic origin.<sup>2</sup>

Likewise, as a state party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Moldova is required to prohibit all forms of discrimination on the basis of race, colour, descent, national, and ethnic origin.

According to the most recent census, the ethnic composition of Moldova is as follows: Moldovans (73.7%), Ukrainians (6.5%), Russians (4.0%), Gagauz (4,5%), Romanians (6.9%), and Bulgarians (1.8%), while the remaining ethnic groups each constitute less than 1% of the population.<sup>3</sup> Also, according to a Study on Equality Perceptions and Attitudes in the Republic of Moldova, out of the total sample, 1,9%<sup>4</sup> of the respondents would accept as members of the family representatives of all marginalized groups. At the same time, 0,7%<sup>5</sup> would expel the members of all these groups from the country. The average of social distance from marginalized groups, 2,4 out of 6 points, indicates that Moldovan citizens would accept representatives of minority groups as neighbors.

Nevertheless, the level of the hate speech is increasing and it affects different groups. This is one of the conclusions of the Promo-LEX monitoring, conducted during 2017-2019. After women and LGBT, muslims, Romaninas, Russians, migrants, Jews and Roma are victims of the hate speech<sup>6</sup>. Only in 2019, from 835 hate speech cases identified, 139 referred to these groups. Usually, the hate speech cases were made based on the ethnic origins, nationality, rase/colour, citizenship, migration and foreigners grounds.

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<sup>2</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 20: NonDiscrimination in Economic, Social and Cultural Rights, UN Doc. E/C.12/GC/20, 2009, Para 19

<sup>3</sup> Bureau of Interethnic Relations of the Republic of Moldova, Population Census, 2014, available at:

<https://statistica.gov.md/pageview.php?l=ro&idc=479&>.

<sup>4</sup> [https://www.md.undp.org/content/moldova/ro/home/library/effective\\_governance/studiu-privind-percepiile-i-atitudinile-fa-de-egalitate-in-repub.html](https://www.md.undp.org/content/moldova/ro/home/library/effective_governance/studiu-privind-percepiile-i-atitudinile-fa-de-egalitate-in-repub.html), see p. 26

<sup>5</sup> [https://www.md.undp.org/content/moldova/ro/home/library/effective\\_governance/studiu-privind-percepiile-i-atitudinile-fa-de-egalitate-in-repub.html](https://www.md.undp.org/content/moldova/ro/home/library/effective_governance/studiu-privind-percepiile-i-atitudinile-fa-de-egalitate-in-repub.html), see p. 26

<sup>6</sup> [https://promolex.md/wp-content/uploads/2019/07/A4\\_hate\\_eng.pdf](https://promolex.md/wp-content/uploads/2019/07/A4_hate_eng.pdf) see p.7 (Summary in English),

[https://promolex.md/wp-content/uploads/2018/11/Report\\_hate\\_speech.pdf](https://promolex.md/wp-content/uploads/2018/11/Report_hate_speech.pdf) (Report in Romanian),

[https://promolex.md/wp-content/uploads/2019/12/A4\\_hate\\_II\\_eng.pdf](https://promolex.md/wp-content/uploads/2019/12/A4_hate_II_eng.pdf), see p.13 (Summary in English) and

[https://promolex.md/wp-content/uploads/2019/12/A4\\_hate\\_ro\\_II\\_web.pdf](https://promolex.md/wp-content/uploads/2019/12/A4_hate_ro_II_web.pdf) (Report in Romanian).

The propagation of prejudices and stereotypes occurs in different ways, from the speeches of political leaders to the patterns of family behaviour, from the rhetoric of religious figures and opinion leaders to the form of reflecting everyday life in the media. The general degree of intolerance depends on the intensity with which we promote prejudices and stereotypes in public space. The higher the influence of opinion leaders and the more prejudiced their discourse, the stronger the impact.

In political and religious context, prejudices and stereotypes becomes an instrument for developing the specific fears, which usually are used in electoral campaigns. Therefore, the xenophobia in the Republic of Moldova takes the form of speeches that incite hatred, violence or discrimination. Regardless of different notions, they all root and promote negative or even hostile perceptions of others. Sooner or later, their effect will be hatred, which in the worst cases, can lead to infringement of rights, aggression and violence. In this context, the national legal framework must be amended so as to answer to new forms of the discrimination, the intolerance and the hate speech in public space, media and online space.

## **2 GENERAL DYNAMIC OF HATE SPEECH AND INCITEMENT OF DISCRIMINATION IN PUBLIC SPACE AND MEDIA**

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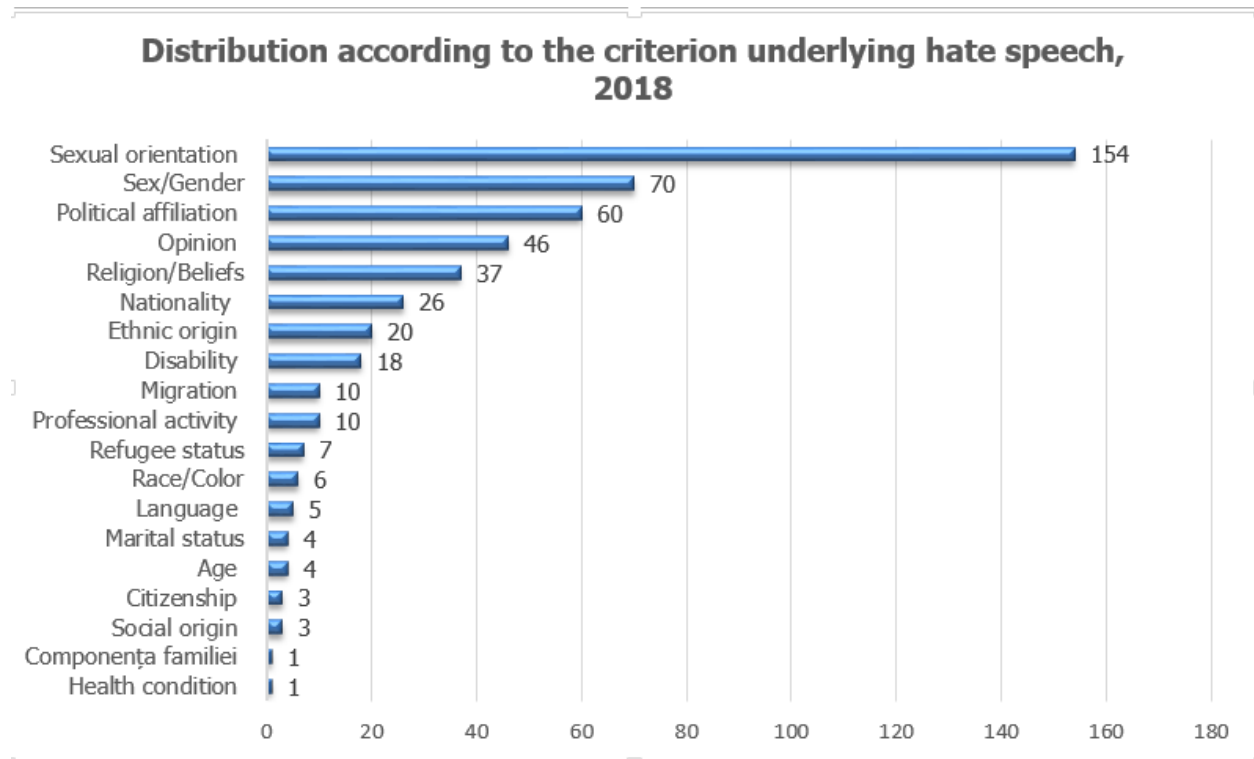
In 2018, Promo-LEX monitored mass-media, public events and online content and identified 368 cases of hate speech, expressed in mass-media, public events and news stories.<sup>7</sup> The overall number of cases identified refers to both hate speech and the cases of incitement to violence, sexism, racism, incitement to discrimination and public promotion of stereotypes and prejudices, inclusive against foreigners (Arabs, Roma, Jews, etc.). Thus, from 368 hate speech cases identified, 114 cases were made on the nationality, ethnic origin, migration, refugee status, race, citizenship, language and religion/beliefs grounds.

All cases were distributed by a total of 740 sources, including online media, information platforms and TV channels. The total number of views of the cases identified amounts to 3 276 216, or an average of over 18 100 views per day. Identified cases on the online networks and web pages gathered overall 67 328 shares. These numbers show how large is the public resonance of the hate speech (see Figure 1).

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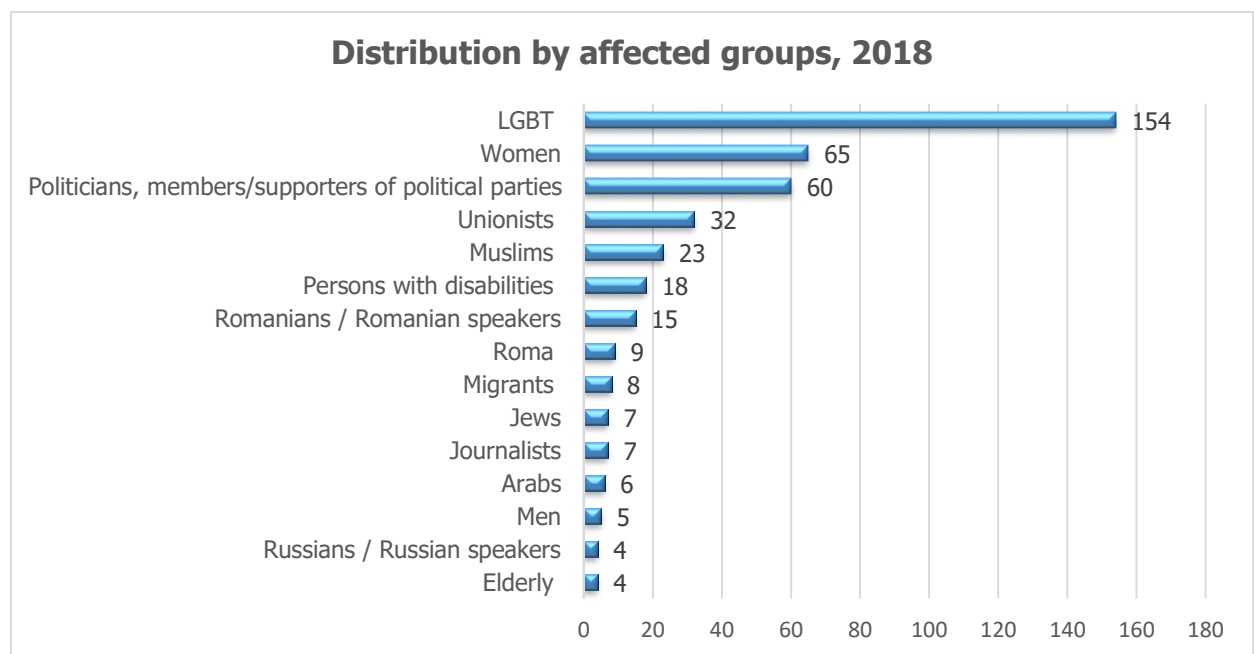
<sup>7</sup> [Promo-LEX Association, 2018, Hate speech and incitement to discrimination in the public space and media in the Republic of Moldova](#); see p. 5.1

**Figure 1.**



Romanians who are identified as Unionists were the fourth most affected group by hate speech in 2018. Out of 368 identified cases, 70 referred to Unionist Romanians and Muslims (see Figure 2).

**Figure 2.**

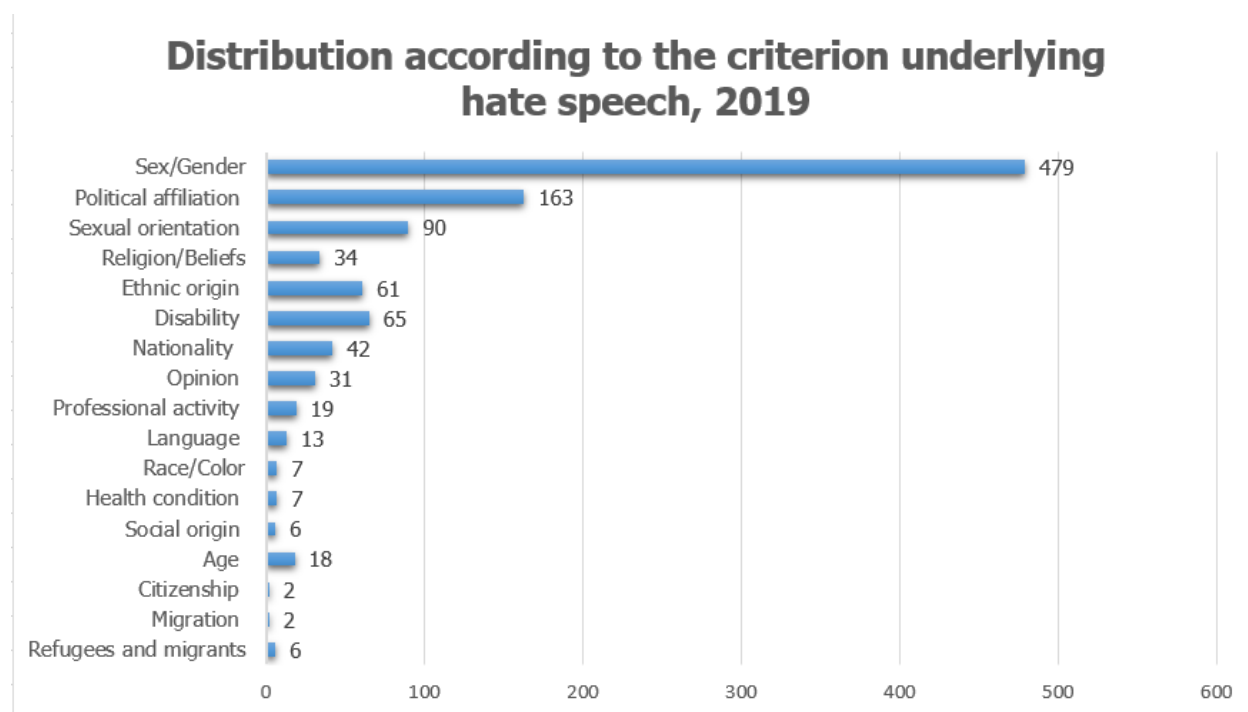


In 2019 Promo-LEX monitoring covered parliamentary elections of 24 February 2019 campaign and local general elections of 20 October/3 November 2019 campaign. In total, Promo-LEX identified 835 cases of hate speech and other forms of the public manifestation of intolerance.

All of them were distributed, an average, by a total of 730 sources, including online media, information platforms and TV channels. The total number of views of the cases identified amounts to 10 288 614, or an average of over 48 303 views per day. The number of views means that the impact of hate speech increased considerably in 2019, it reached a much larger audience and affected more people, respectively.

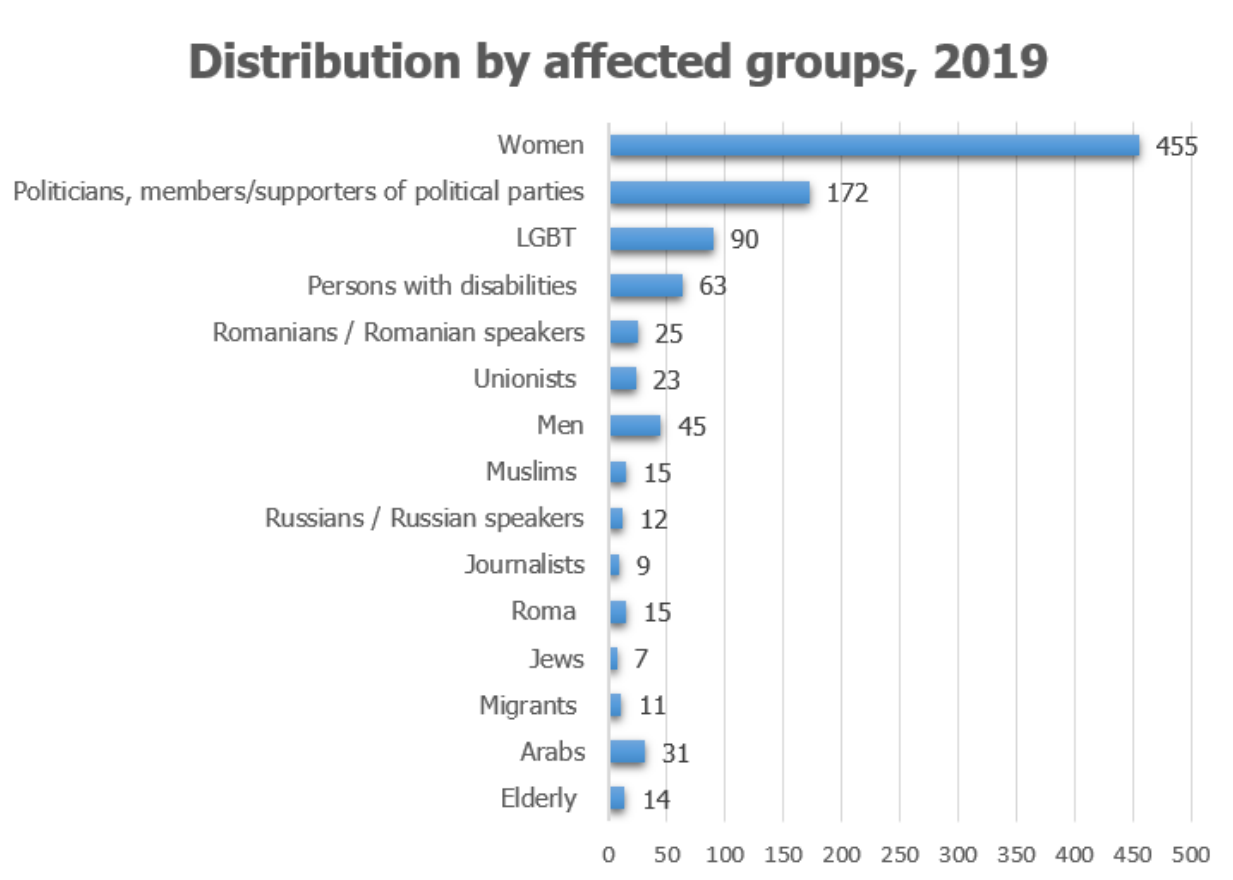
If in 2018, Promo-LEX identified 114 cases of the hate speech which were made on the nationality, ethnic origin, migration, refugee status, race, citizenship, language and religion/beliefs grounds, than in 2019 this number increased to 167 (see Figure 3).

**Figure 3.**



The number of cases of incitement to discrimination against these groups has increased in 2019 (139 cases) comparing to 2018 (104 cases) – see Figure 4.

Figure 4.



If in 2018, there were 2 news cases of hate speech per day on the average, then in 2019 the monitoring results show an increase of the proportion of new cases to 4,2 per day.

**Hate speech against minorities or foreigners is manifested in political and religious context. Most cases of hate speech against these groups are based on the religion, nationality and ethnic origin grounds, with men being the principal authors.**

### **3 XENOPHOBIA, HATE SPEECH AND INCITEMENT TO DISCRIMINATION AGAINST UNIONIST ROMANIANS IN PUBLIC SPACE AND MEDIA**

During 2018 year, the hate speech against Romanians who are identified as Unionists was intensively used by the different public actors, in special politicians and their supporters<sup>8</sup>. Unionism is not an unprecedented topic for the Moldovan public, this issue has been increasingly drawing

<sup>8</sup> [https://promolex.md/wp-content/uploads/2018/11/Report\\_hate\\_speech.pdf](https://promolex.md/wp-content/uploads/2018/11/Report_hate_speech.pdf) see p. 54

attention recently. In addition to the pro-union political parties, there also appeared anti-unionist parties. Through their stance, including through electoral programs, they militate against unionism as a social-political trend and the unionists, in particular.

Placement of political parties in divergent positions with unionism led to the development of a permanent conflict in the public space. This conflict extended to the supporters of these parties, the supporters or opponents of unionism and became one of the most burning issues of 2018.

The public attention that unionism has gained in recent years is amplified by the 100th anniversary of the Great Unification of Romania that dates back to 1918. The actions of the Unionist Romanians in connection with this event have generated many discussions and controversies. Symbolic declarations on union<sup>9</sup>, large-scale unionist marches and demonstrations have drawn the attention of the media and society. Hate speech against unionism and supporters of this trend is one of the most aggressive discourses registered in the period of monitoring.

### Example 1.

A Facebook page called "**Unionism Passes Motherland Remains**" has explicitly promoted hatred for unionists in several posts.



The source of the image: Facebook page capture "Unionism Passes Motherland Remains"

<sup>9</sup> See, for example: <https://www.mediafax.ro/externe/peste-100-de-localitati-din-republica-moldova-au-semnat-declaratiasimbolica-de-unire-cu-romania-17052471>



Messages inciting violence have attracted the public attention. A symbolic image, representing a person hanging on a pole with the inscription "UNIFICATION" is accompanied by a description in Russian, according to which the same thing - the hangman - awaits the "fascist unionists" after the parliamentary elections.

The post drew the attention of the media, which published dozens of articles about incitement to violence against Unionist Romanians, the human rights NGOs also condemned the hate speech and called for the Prosecutor's General Office to investigate the case<sup>10</sup>. Subsequently, the Prosecutor's Office informed the Promo-LEX Association that the message used in this post cannot be investigated criminally since it falls within the limits of the freedom of expression.

The situation was amplified by the extension of the hate message to other social groups. A few weeks before this case, Igor Dodon<sup>11</sup> ordered the placement of several billboards<sup>12</sup> with the message: "Unionism passes, Motherland remains", thus becoming associated with the hateful post. The supporters of the Party of Socialists were implicitly affected by the post, as well as the Russians and Russian-speaking population of the Republic of Moldova, because the threatening message was written in Russian.

Other relevant example refers to the declaration of the Democrat Deputy, Corneliu Dudnic, who declared in the District Council of Local Authorities in Gagauzia<sup>13</sup>:

### **Example 2.**

"To close the issue of unionism, I assure you that if the unification occurs, I will be the first to take a gun and go to defend the autonomy of Gagauzia."

The statement alludes to violence and the use of weapons and projects them on unionism. By his own example, the deputy provides the public with a model of aggressive behavior that can incite hatred and violence against unionists.

The President of the Democratic Party, Vlad Plahotniuc, said that the party warned Corneliu Dudnic about the statements he made: "At the same time, the Democratic Party does not accept incitement to violence, statements that imply the use of force or weapon."<sup>14</sup> In a public event against unification, organized on 27 March 2018 in Ceadir-Lunga, the subject of unionism was extrapolated from the pro-unionist parties to pro-European parties and the current government which, in the view of the participants, supports the unionist movement, since it does not prohibit it by law.

On March 5, 2019, during the 'Puterea a patra' TV show (The Fourth Power), broadcast by N4 TV channel, Igor Dodon was asked:

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<sup>10</sup> Promo-LEX asks the law enforcement agencies to react to the messages inciting hatred, published on a social network, 11.04.2018

<sup>11</sup> Igor Dodon - politician, president of the Republic of Moldova, since December 23, 2016

<sup>12</sup> [https://adevarul.ro/moldova/politica/unionismul-trece-patria-ramine-dodon-a-invadat-tara-mesaje-unionisti-devenit-agresivi-perfizi-1\\_5aa65aabdf52022f7577be15/index.html](https://adevarul.ro/moldova/politica/unionismul-trece-patria-ramine-dodon-a-invadat-tara-mesaje-unionisti-devenit-agresivi-perfizi-1_5aa65aabdf52022f7577be15/index.html)

<sup>13</sup> <https://agora.md/stiri/42601/video--deputat-pd-daca-se-va-produce-unirea--voi-fi-primul-care-va-lua>

<sup>14</sup> [https://adevarul.ro/moldova/politica/corneliu-dudnic-avertizat-vlad-plahotniuc-afirmatia-lua-arma-mana-cazul-uniriiromania-1\\_5a953dfbdf52022f7506f60e/index.html](https://adevarul.ro/moldova/politica/corneliu-dudnic-avertizat-vlad-plahotniuc-afirmatia-lua-arma-mana-cazul-uniriiromania-1_5a953dfbdf52022f7506f60e/index.html)

### Example 3

"Would you be shocked if, for example, some socialist MPs will suddenly realize that democrat blood runs through their veins?" (reference being made to the Democratic Party).

Igor Dodon replied: "It's most important that it isn't Romanian. I saw how at the beginning of election campaign, some candidates displayed elements of Romanian spirit. Well, that's a joke, of course, and not a very good one."

Although the head of the state acknowledged that he chose a politically incorrect wording, it cannot excuse his incitement to intolerance towards Romanian people or speakers of the Romanian language, especially in a society that is so much concerned with ethnolinguistic problems as the Republic of Moldova.

The pro-unionist rhetoric outlines the tendency to promote intolerance towards Russians, Russian speakers or those who support a Russia-friendly policy. In the anti-unionist rhetoric, hate speech is based on the idea of destroying the statehood, national history, traditions and people. On the other hand, there is also incitement to banning this trend or the limitation of the rights of the unionists, especially the right to expression and public assemblies. Against the backdrop of political instability and geopolitical division of society, unionism becomes an issue increasingly exploited by Moldovan politicians, and this fact places it automatically on the public agenda.

**Xenophobia towards Romanians is accompanied by hate speech and it places these groups among the most affected of this type of speech. Only during 2018-2019 period, Promo-LEX identified 95 cases of the hate speech against Unionist Romanians or Romanian speakers.**

## 4 XENOPHOBIA, HATE SPEECH AND INCITEMENT TO DISCRIMINATION AGAINST MUSLIMS, ARAB AND REFUGEES

According to the **Article 19**, hate speech in the European space is caused and amplified by the humanitarian crisis in Syria and the tidal waves of immigrants and refugees, faced by the European states<sup>15</sup>. The quoted source mentions that the intensification of hate speeches and hate crimes is founded both on the cultural differences and the impact of migration on people, on the one hand, and on political rhetoric, on the other hand. More specifically, various political actors are artificially escalating tensions with immigrants and refugees by using discourses against these groups for gaining political dividends.

<sup>15</sup> Article 19, 2018, [https://www.article19.org/wp-content/uploads/2018/03/ECA-hate-speech-compilation-report\\_March-2018.pdf](https://www.article19.org/wp-content/uploads/2018/03/ECA-hate-speech-compilation-report_March-2018.pdf)

### **Example 1.**

The echoes of these political strategies can also be felt in the Republic of Moldova, too. The most eloquent example is the case of "30,000 Syrians".

It produced an entire avalanche of news, articles events, reactions and manipulations of public opinion based on a piece of fake news and misinformation during the presidential campaign of 2016. The impact of the case, manifested through hate speech and public promotion of intolerance, has been discussed in the international forums on human rights.

After the presidential elections, the issue reappeared on public agenda during the new local elections in Chisinau of 2018. A series of webpages and Facebook pages that intensively promoted news on this topic appeared.

### **Example 2.**

The independent press portal wordpress.com published a series of articles about Andrei Nastase's connection with the United Arab Emirates, the opening of mosques in Chisinau or bringing of 50,000 of Arabs to Moldova.

Though this kind of news does not contain direct expressions that bring forth prejudices against refugees, Muslims, Syrians or immigrants, they aim at associating intolerance towards these groups in the public space with certain politicians.

Thus, a negative image transfer occurs, the image of some groups, perceived as dangerous, is transferred to some political figures.

### **Example 3<sup>16</sup>.**

The fake video "Moldova in Al Jazeera" presents Andrei Nastase, the PPDA candidate for mayor's office in Chisinau, promising to give Chisinau for a rent of 50 years to some sheiks from Abu Dhabi.

It is claimed that they will build mosques and arrange special places for Arabs. The video opens with a news story about Syria fighting with terrorists, projecting prejudices about Muslims and terrorists over the whole movie. The news also tells that terrorists from Syria, Muslims and Arabs (potential terrorists) will come to Moldova and build their mosques (danger for Christianity), presenting Andrei Nastase<sup>17</sup> as the candidate, who is responsible for these actions.

The video has acquired nearly 600,000 views and has been distributed 11,504 times. For comparison, according to the information provided by the Central Electoral Commission, about 250 000 people participated in the new local elections in Chisinau (runoff).

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<sup>16</sup> <https://www.facebook.com/stiripespuse/videos/261314841095669/>

<sup>17</sup> Andrei Nastase – Chairman of "Dignity and True" Platform Party (2015 – present), ex-Minister of Internal Affairs (June 18 – November 14, 2020)

Therefore, such manipulating materials can play an important role in the election campaigns, if the required measures are taken. In the general context, news also exploits prejudices against Muslims, Arabs or refugees.

Muslims are affected by hate speech both in the political and religious contexts. Religious discourse against Muslims is largely based on prejudices that associate this group either with violence and danger, or with terrorists, extremists or Islamization, which could endanger Christianity.

In September 2019, a piece of news published by *aparatorul.md* (30.09.2019) described an incident among some women that took place in Chisinau. Some of the conflict participants were of another nationality / citizenship (presumably Arabs) and the publication presented it in a negative context, although the ethnicity itself had nothing to do with the incident<sup>18</sup>.

Igor Dodon expressed his opinion with regard to this incident in a message posted on his Facebook page. He wrote:

**Example 4<sup>19</sup>.**

"We, the Moldovans, are a welcoming, friendly and hospitable nation. (...) But the fact that we are modest and tolerant is not a reason for strangers to behave in a brutal, insulting and offensive manner. Especially, we will not tolerate such behaviors in our country and in relation to our citizens. Unfortunately, a case of such a violent behavior has been recently registered, when a citizen of our country, a young mother, was aggressively attacked in the presence of her own child by a group of foreign citizens studying in the Republic of Moldova. (...) In this regard, I urge the authorized institutions, the university concerned, as well as the migration services, to deliver a note on the incident as soon as possible and to examine the possibility of withdrawing the permit of stay of the foreign students involved in the incident, if the circumstances of the case require such a decision."

Igor Dodon's speech is based on xenophobic attitudes, showing intolerance and prejudice towards foreigners. In this particular case, the hooliganism of conflict participants has nothing to do with their status of foreign citizens.

The same incident generated a series of aggressive discussions and discourses on social networks, the vast majority of people blamed the Arabs for the incident, thus ignoring its causes and circumstances. Considering the public response to this case, the students of the Faculty of Medicine were expelled and left the Republic of Moldova. The case is a serious example of xenophobia and religious intolerance, which has not been sanctioned in any way by the authorities of the Republic of Moldova.

**Although Muslims, Arabs, immigrants and Syrians are per se four distinct groups, quite often a common image of these groups is created in the public space, being generally perceived as dangerous. This one image has no factual basis and originates from intolerance that, in turn, provokes further intolerance.**

<sup>18</sup> <https://www.aparatorul.md/studente-de-origine-araba-bat-o-mamica-in-prezenta-fetitei-sale-de-3-ani/>

<sup>19</sup> <https://bit.ly/38x8UxE>

## 5 LEGAL FRAMEWORK AT THE NATIONAL LEVEL

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**The Constitution of the Republic of Moldova** recognizes, on the one hand, the principles of international law and Universal Declaration of Human Rights (see Article 4) and, on the other, it regulates the standards in the field of equality and freedom of expression<sup>20</sup>. The difference between Article 16 and similar regulations of international treaties is the closed list of characteristics in the Constitution of the Republic of Moldova, which limits the applicability of the guarantee to social groups.

Article 32 (3) of the Constitution contains a rule interpreting a form of hate speech: "*The law shall forbid and prosecute all actions aimed at denying and slandering of the State and people, instigation to sedition, war of aggression, national, racial or religious hatred, incitement to discrimination, territorial separatism, public violence, or other manifestations encroaching upon the constitutional order.*" The regulation is deficient because it combines concepts that are different in essence: a) manifestations expressed against the state and its integrity, and b) manifestations expressed against groups of people.

The national legislation provides a special definition of hate speech, which is, in fact, a mixture of the concepts offered by the UN treaties and the notions proposed by the Council of Europe and is contained in the Law on Freedom of Expression no.64/2010, article 2: "*hate speech - any form of expression that causes, propagates, advocates or justifies racial hatred, xenophobia, anti-Semitism or other forms of intolerance-based hatred.*" The notion offered by the Law is incomplete; it cannot correspond to reality, nor does it provide clarity in what the hate speech means. The definition is rather permissive than restrictive, due to the phrases "any form of expression" and "other forms of intolerance-based hatred". Even so, given the lack of additional regulations and a supportive legal framework, complemented by insufficient understanding of the hate speech phenomenon in Moldova, the definition is vague and does not meet the practical needs of legal categorization and sanctioning. The definition also has a limited list of protected characteristics.

Since 2007, there have been no convictions for racial discrimination brought under Articles 176 and 346 of the **Criminal Code**. Racially motivated criminal incidents are not investigated as hate crimes but rather tend to be prosecuted under the hooliganism provisions of the Criminal Code (Article 287) or under the Code of Administrative Offences<sup>21</sup>.

Criminal Law does not provide regulations that would offer efficient hate speech guarantees. The Misdemeanor Code doesn't provide any regulation of hate speech. Meanwhile, the Criminal Code provides a limited scope for some forms of dangerous expression in Article 346<sup>22</sup>. The rule is

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<sup>20</sup> Constitution of Republic of Moldova, Article 16: "All citizens of the Republic of Moldova are equal before the law and public authorities, regardless of the race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin."

<sup>21</sup> [Administrative Code](#)

<sup>22</sup> Criminal Code, Article 346: "Deliberate actions, public calls, including through either printed or electronic media, aimed at inciting national, racial or religious hostility or discord, the humiliation of national honour and dignity, direct

unclear and restrictive. Expressions "the humiliation of national honour and dignity " and "direct or indirect limitation of rights or offering direct or indirect advantages" are abstract, especially given the lack of their practical understanding. Article 346 cannot meet the current needs, and in particular, it cannot provide protection for most of the groups affected by hate speech, because of the limitation of the protected characteristics: national, ethnic, racial and religious affiliation.

At the same time, Article 6(1) of the **Contravention Code** provides that persons who have committed offenses (contraventions) are equal before the law and public authorities and are subject to liability irrespective of inter alia race.<sup>23</sup> The Contravention Code does not establish contraventions committed on the basis of bias associated with race or other characteristics as aggravating circumstances.

In 2012 Moldova enacted the Law on Ensuring Equality which prohibits discrimination on the grounds of inter alia race, colour, ethnic origin and language.<sup>24</sup> **The Equality Law no.121/2012** regulates a form that is close to hate speech - "*incitement to discrimination*". The distinction between them is the narrow spectrum of relationships that the latter regulates, that is, behavior that is capable to incite discrimination against a person, based on criteria protected by law; Article 2: "*Any behavior by which a person applies pressure or displays intentional conduct for the purpose of discriminating against a third person on the basis of the criteria stipulated in this law*".

Even if this definition has to be analyzed together with the general definition of discrimination<sup>25</sup>, it does not provide clarity in the understanding of the notion of incitement to discrimination. If we compare this notion to the elements that the hate speech cumulatively meets, as set out in General Comment No.34 of the HRC (analyzed above), we will notice at least an important inconsistency. Namely, the urge capable of generating discriminatory actions or behavior. An analysis<sup>26</sup> of the Law on Equality carried out by the Council of Europe shows that the definition of incitement to discrimination does not refer to the "perceived" link between a person and a protected criterion, or to the intention to discriminate, incite discrimination and support someone to discriminate. Therefore, we can conclude that although there is a legislative framework, it is either insufficient or not sufficiently clear and predictable to provide effective protection against incitement to discrimination

In 2016, the Ministry of Justice prepared and sent the Parliament two draft laws regarding prejudice-motivated crimes, one covering the misdemeanour field, and other the criminal area. The draft laws were further merged in one single document, called the **draft Law No 301 of 1 July 2016** amending and supplementing certain legal acts on regulating prejudice-motivated crimes, version corroborated with draft No 277 of 20 June 2016 (*hereinafter referred to as draft Law No 301*).

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or indirect limitation of rights or offering direct or indirect advantages to citizens by virtue of their national, ethnic, racial or religious affiliation."

<sup>23</sup> [Contravention Code](#) (Code No. 218 of 24 October 2008).

<sup>24</sup> Law on Ensuring Equality (Law No. 121 of 25 May 2012), Article 1(1)

<sup>25</sup> Definition of discrimination: "Any distinction, exclusion, restriction or preference in the rights and freedoms of a person or group of persons, and the support of discriminatory behavior based on the actual criteria laid down by this law or on presumed criteria" Law 121 on equality, 2012

<sup>26</sup> Ivana Roagna, Nevena Petrusic, 2016, [Assessment of the Law on ensuring equality in the Republic of Moldova in compliance with the Council of Europe anti-discrimination standards](#), p. 10-11

The draft Law No 301 represents a set of legislative amendments of the Criminal and Contravention Codes, referring, first of all, to defining the ground of prejudice, reviewing the basic crimes and the aggravations that refer to the hatred- and prejudice-motivated acts.

In 2019, the Ministry of Justice reviewed the as draft Law No 301 and sent again to the Parliament for adoption<sup>27</sup>. The Parliament, however, did not adopt the draft Law No 301 still, so that the relevant national law remains non-compliant with international standards on sanctioning the hate speech.

## 6 RECOMMENDATIONS

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- Develop a comprehensive strategy for preventing and combating hate speech. The strategy should include the establishment of a hate speech monitoring mechanism, cooperation between law enforcement bodies and other relevant bodies, in order to facilitate the criminal prosecution of hate speech and improvement of hate speech sanctioning mechanisms.
- Amending the legal framework: (a) to adopt the draft Law No 301 of the Parliament of the Republic of Moldova amending and supplementing certain legal acts on regulating prejudice-motivated crimes, according to the international standards; (b) to review the electoral legal framework, especially the Electoral Code, in order to define hate speech in election campaigns and regulate ways of discouraging and sanctioning the hate speech.
- Develop and implement regular awareness-raising campaigns on preventing and combating hate speech in collaboration with law enforcement bodies, national human rights bodies, Audiovisual Council, Press Council, Central Electoral Commission and the civil society.
- Conduct periodic trainings for law enforcement bodies and other national authorities with attributions to react to hate speech on identifying hate speech, sexism, racism, homophobia, forms of their expression, protected grounds and society's prejudices.

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<sup>27</sup> Letter of the Ministry of Justice No 03/9331 of 24 September 2019.