

ANALYTICAL STUDY

with regard to the procedure of investigation and
bringing to contravention and criminal liability
provided by the new provisions on hate speech

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ABBREVIATIONS

Art. – article(s)

Etc. – et cetera

No. – number(s)

para. – paragraph(s)

AC – Audiovisual Council

AMSC – Audiovisual Media Services Code

CC – Criminal Code

CEC – Central Electoral Commission

CERD – UN Committee on the Elimination of Racial Discrimination

CIN – Coalition for Inclusion and Nondiscrimination

ECHR – European Convention on Human Rights

ECRI – European Commission against Racism and Intolerance

FA – Finding Agent(s)

FGD – Focus Group Discussions

GIP – General Inspectorate of Police

GPO – General Prosecutor's Office

HS – Hate Speech

ICT – Information and Communication Technologies

IDGP – Incitement to Discrimination on Grounds of Prejudice

ITS – Information Technologies Service

LGBTQI – Lesbian, Gay, Bisexual, Trans, Queer, Intersex

MAI – Ministry of Internal Affairs

NIJ – National Institute of Justice

NIPS – National Inspectorate of Public Security

OPA – Office of the People's Advocate

PI – Police Inspectorate

PMC – Prejudice Motivated Crime

POCOCSC – Prosecutor's Office for Combating Organized Crime and Special Cases

UNHRC – United Nations Human Rights Council

INTRODUCTION

Supplementing and amending the Contravention Code and the Criminal Code, through the adoption of Law no. 111 of 21.04.2022 for the amendment of some normative acts¹ (hereinafter Law no. 111/2022) and Law no. 73 of 31.03.2022 regarding the amendment of some normative acts² (hereinafter Law no. 73/2022), in 2022, represented, on the one hand, the transposition of the recommendations of the UN Committee on the Elimination of Racial Discrimination³ (CEDR) from 2017, the recommendations of the European Commission against Racism and Intolerance⁴ (ECRI) from 2018, as well as the recommendations of the United Nations Human Rights Council⁵ (UNHRC) from 2022 on combating and sanctioning hate speech and prejudice motivated crimes. On the other hand, these changes led the national authorities with powers in this field, in particular the General Prosecutor's Office (GPO) and the General Inspectorate of Police (GIP) of the Ministry of Internal Affairs (MAI), to take measures to ensure the correct enforcement of the provisions, as well as to ensure an effective response to the phenomenon of hate speech and incitement to discrimination in the Republic of Moldova.

The monitoring data collected by the Promo-LEX Association⁶ show that the phenomenon of hate speech is constantly present in the public space, in mass media and in online environment (2033 cases identified in the period of 2018–2022), its dynamics is increasing in certain contexts, either electoral (for example: parliamentary, presidential elections, etc.), or social (for example: the COVID-19 pandemic, marches to promote the LGBTIQ rights, etc.), or political and military (for example: the war of the Russian Federation against Ukraine). At the same time, only in the last 12 months, the Information Center GENDERDOC-M⁷ documented 41 cases

of hate speech and incitement to discrimination directed against LGBTIQ people and 15 cases of prejudice motivated crimes.

Thus, it is important to assess the capacity of the Police to document and bring to contravention and criminal liability, as provided by the new provisions on hate speech, from the moment they come into force (July 3, 2022) in order to ensure the efficiency and quality of the documentation and accountability of the prosecution process, as well as to identify the gaps and vulnerabilities of this process.

The evaluation process has been carried out in partnership with the National Inspectorate for Public Security (NIPS) of the GIP of the MAI and focused on the following aspects: clarity and understanding of the new provisions; on the process of documenting the alleged cases of hate speech (HS), incitement to discrimination on grounds of prejudice (IDGP) and prejudice motivated crimes (PMC); collection of disaggregated data; capacity of the finding agent (FA); difficulties in the processes of documentation and bringing to accountability; protecting victims and preventing hate speech, incitement to discrimination and prejudice motivated crimes. The formulation of findings and recommendations was based on qualitative and quantitative analysis, which will allow us, on the one hand, to understand the aspects of the documentation and bringing to accountability procedures that should be improved, and, on the other hand, the actions that must be taken to eliminate the difficulties encountered by the FA at the stages of documenting the alleged cases, as well as ensuring an effective response by the Police to the violations of the new provisions of the Contravention Code and Criminal Code, introduced by the adoption of Law no. 111/2022 and Law no. 73/2022.

1 [Law no. 111](#) of 21.04.2023 regarding the completion of some normative acts.

2 [Law no. 73](#) of 31.03.2022 regarding the modification of some normative acts.

3 UN Committee on the Elimination of Racial Discrimination, [Concluding Observations](#) on the Combined Tenth and Eleventh Periodic Reports, 2017.

4 European Commission against Racism and Intolerance, [Report](#) on the Republic of Moldova, 5th monitoring cycle, 2018.

5 UN Human Rights Council, [Report](#) of the Working Group within the Universal Periodic Review of the Republic of Moldova, cycle III, 2022.

6 Promo-LEX Association, [Thematic sheet](#): Hate speech and incitement to discrimination in the public space and in the mass media in the Republic of Moldova in the period 2018–2021 and [Monitoring report](#), 2022.

7 "GENDERDOC-M" Information Center, Letter of 24 July 2023.

METHODOLOGY

The study aims at assessing the capacity of the Police to document and bring to contravention and criminal liability for hate speech, incitement to discrimination and prejudice motivated crimes.

The methodology included reporting of legislative developments in the field of preventing and combating hate speech from the moment of entry into force of the new rules (July 3, 2022) until July 3, 2023 (12 months), the analysis of internal mechanisms and procedures for monitoring, documentation and collection of disaggregated data. The document also includes the analysis of the tools to prevent hate speech and incitement to discrimination developed by the GIP of the MAI and GPO, as well as the difficulties encountered in the process of identification and documentation by the FAs.

The data have been collected through requests for access to information submitted to the GIP, GPO, the Council for Equality, the Office of the

People's Advocate (OPA), the GENDERDOC-M Information Center, etc. The analysis was completed with a sociological research based on quantitative (sociological survey) and qualitative (focus group discussion (FGD) data collection methods. The sociological research sought to know the perceptions of the finding agents (FAs) regarding the new provisions, the documentation and accountability procedure, the difficulties encountered, etc.

The sociological survey was conducted online, in the period between June 19 and July 3, 2023, by 864 FAs from 40 police inspectorates (PIs) of the GIP of the MAI, which represents 22.64% of the total number of FAs employed in within the GIP as of March 1, 2023⁸. The maximum sampling error is $\pm 4\%$.

SAMPLE STRUCTURE:

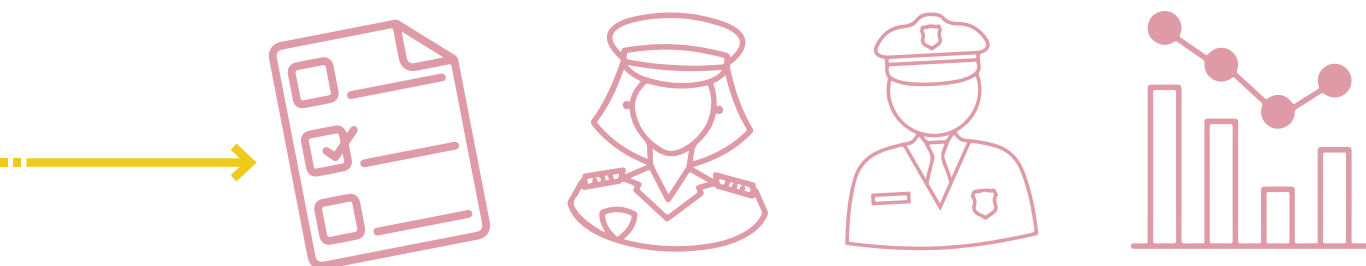
Gender	Man	87.2%
	Woman	12.8%
Degree	Officer	54.1%
	Petty officer	45.9%
Length of service in the police force	Less than 1 year	10.5%
	From 1 to 5 years	30.6%
	From 5 to 10 years	15.5%
	More than 10 years	43.4%
Age	19-30 years old	37.0%
	31-40 years old	40.4%
	41-50 years old	20.2%
	51 years and older	2.3%

⁸ General Police Inspectorate, Letter no. 34/11-1894 of May 10, 2023.

The questionnaire completed by the FAs contained specific questions regarding knowledge of the legal framework, documentation and records of cases, analysis of cases, prevention and overcoming of difficulties, etc.

Quantitative data were supplemented with qualitative data, collected through two FGDs, which were organized on July 21, 2023. The qualitative research sample included 24 finding agents: 12 petty officers and 12 officers from 24 PIs. The focus group discussions were based on an interview guide to gain a deeper understanding of certain challenges that FAs encounter in the process of documenting and holding accountable in such cases.

In carrying out the sociological research, the team of the Promo-LEX Association was guided by SOCIOPOLIS CONSULTANCY LLC.





FINDINGS

The legal framework and public policies on hate speech

- **Finding No. 1:** *Twelve months after the entry into force of the new provisions of the Contravention Code and the Criminal Code, no related regulatory framework has been developed to allow their effective implementation.*

Although art. 70/1 Contravention Code and art. 346 of the Criminal Code make reference to the incitement to discrimination and the incitement to violent actions on grounds of prejudice through information systems, the national legislation does not provide for the conditions for restricting access to webpages that contain information that incites violent actions, hatred or discrimination or for the deletion of illegal online content.

- **Finding No. 2:** *There is lack of a prompt reaction on behalf of the authorities to the number of cases of hate speech and incitement to discrimination documented by relevant organizations.*

During the reference period, the GENDERDOC-M Information Center documented 41 cases of hate speech and incitement to discrimination and 15 cases of prejudice motivated crimes. The Coalition for Inclusion and Nondiscrimination filed a complaint with POCOCSC, which was referred to the Equality Council. Subsequently, the Council decided to return the materials to POCOCSC.

At the same time, according to the FAs' responses to the sociological questionnaire, 6.4% documented cases of HS, IDGP or PMC, and in 21 cases, the final decision was upheld by the court. However, in the period between July 3, 2022 and July 3, 2023, a contravention case (art. 70/1 Contravention Code) and a criminal case (art. 36 Criminal Code) were initiated at the national level, both ended with the perpetrators being sanctioned. During the same period, the GIP registered two complaints, one of which was submitted online⁹.

Knowledge and understanding of new legal provisions

- **Finding No. 1:** *Even if in the opinion of more than 75% of the FAs the new provisions are partly clear or clear, they encounter difficulties in understanding the basic concepts.*

For 76.9% and, respectively, 82.1% of FAs, the provisions of art. 52, para. (3) and art. 70/1 Criminal Code are partially clear or clear, although some of them do not know that the FA for art. 70/1 CC is the Police, and not the Council for Equality. The norm provided for in art. 346 of the Criminal Code is partially known or known by 79.80%, although 1 out of 7 FAs does not understand what the "reasons for prejudice" represent.

At the same time, approximately 2 out of 10 FAs know the legal framework that defines hate speech, which points to insufficient time being given in training on the national legal framework and understanding the concept of "hate speech".

- **Finding No. 2:** *The disproportionality between the large number of documented cases and the infringement cases initiated may be determined by the misunderstanding of what constitutes "prejudice grounds".*

⁹ Internal protection and anti-corruption service of the MAI, Letter no. 4/1769 of August 11, 2023.

Of the total number of FAs, 6.4% documented at least one case of HS, IDGP and PMC in the last 12 months, however, during the reference period, the GIP initiated only one contravention case and one criminal case. These data may indicate that FAs have an insufficient understanding of the new provisions or that the process of analyzing the alleged cases demonstrated the lack of prejudice, thus determining the review of the legal classification of the contravention in the analysis stage.

Instructions and/or regulations on the implementation of the new legal provisions

- *Finding: In the absence of internal instructions or regulations for documenting and evaluating cases of hate speech, the FA develops its own internal procedures, based on their experience within the PI.*

At the GIP level of the MAI, there is only the Standard Operating Procedure regarding the qualification and investigation of crimes motivated by prejudice, but no regulations or instructions regarding the application of the new provisions. However, in the opinion of 1/3 of FAs and 2/3 of those who documented a case in the last 12 months, respectively, there is such an instruction in the PI where they work.

Documentation of contraventions

- *Finding No. 1: The finding agents do not know that the initiation of the documentation of a potential case of HS, IDGP and PMC can be carried out even in the absence of the victim's complaint.*

According to most FAs (64.9%), a case of HS, IDGP and PMC can be documented based on a complaint from the victim. The qualitative analysis showed that in the opinion of the FAs, even in cases of self-reporting, the documentation process depends on the victim's decision to file a complaint or not.

- *Finding No. 2: Finding agents confuse "criticism", "insult" with "hate speech".*

According to the qualitative analysis, FAs take actions more often in cases of insults and "hatred of the police", which indicates that the notions of "hate speech", "incitement to discrimination on grounds of prejudice" are not understood by the FAs, and they confuse "criticism", "insult" and "hate speech".

- *Finding No. 3: Involvement of the FA in the process of documenting a HS, IDGP and PMC case increases the likelihood of quality evidence collection.*

The quantitative analysis showed that the percentage of FAs who do not know the types of evidence required in the documentation process is 2.5 times lower for agents who have documented a case in the last 12 months. At the same time, in the opinion of FAs who have documented a case in the last 12 months, if the first hearings are conducted improperly and the reason is not established, they are "unable to initiate the case".

- *Finding No. 4: Collaboration with the Equality Council, in the FA's opinion, contributes to solving cases, but few agents collaborate with the Council.*

Out of the total of 6.4% of FAs (55 cases) who documented at least a case in the last 12 months, only in 3 out of 14 cases mentioned by them, the Equality Council was asked for its opinion. In only one case, the Council found the existence of acts of incitement to discrimination.

Accountability and effectiveness of sanctions

- *Finding: Every third FA who documented a case in the last 12 months qualified the current sanctioning system as "sufficient".*

Although the GIP initiated only one contravention case and one criminal case in the last 12 months, in 26 cases out of a total of 55 FAs that documented cases of HS, IDGP and PMC, the final decision was challenged in court, and in the majority of cases (21 cases) the decision was upheld.

About 13% of FAs rated the current system of documentation, prosecution and sanctioning as very effective, compared to 28.1% of those who documented a case in the last 12 months.

Difficulties in the documentation and sanctioning process

- *Finding No. 1: Within some PIs, there is a practice of delegating some people to help colleagues in documenting and analyzing cases.*

Although there is no order at the GIP level to designate individuals to deal with cases of hate speech, incitement to discrimination and/or prejudice motivated crimes, half of the agents who documented a case in the last 12 months said that such a person exists within the PI in which they operate.

- *Finding No. 2: In the absence of a consistent practice of documenting and analyzing cases of HS, IDGP and PMC, one out of two FAs is unable to appreciate at which stage they encounter difficulties.*

One in two FAs cannot identify at which stage they encounter difficulties. Most often, difficulties are encountered at the documentation stage (2 out of 10 FAs). In the case of FAs who have documented a case in the last 12 months, by comparison, difficulties are most frequently encountered at the analysis stage (approximately 4 out of 10 FAs).

- *Finding No. 3: The experience of documenting a case of HS, IDGP and PMC helps to combat myths about the process of sanctioning such a case.*

The percentage of FAs in the opinion of which: (1) the long duration of court processes; (2) lack of adequate legislation and (3) poor collaboration with other institutions are the main difficulties is about two times lower for agents who have documented a case in the last 12 months compared to FAs who have not documented such cases.

- *Finding No. 4: The lack of human resources within PIs is one of the causes of difficulties in the documentation process.*

The lack of human resources within the PIs, the large number of responsibilities per police officer, staff fluctuation and the lack of protection against discrimination are the causes that, in the opinion of the FAs, cause difficulties in the process of documenting HS, IDGP and/or PMC cases.

Collection of disaggregated data

- **Finding No. 1:** *GIP and GPO collect disaggregated data on cases of prejudice motivated crime, but not on hate speech and incitement to discrimination.*

During the evaluation period, the General Prosecutor's Office and the General Inspectorate of Police made changes in the interdepartmental Order no. 121/254/286-0/95 of 18.07.2008 regarding the unified record of crimes, criminal cases and persons who have committed crimes. Chapter "Motive/ reason" from indicator no. 15 has been supplemented with new indices, but these only refer to crimes, not misdemeanors.

- **Finding No. 2:** *Every second FA does not know whether or not there are requirements to include disaggregated data following the documentation of a case.*

Every second FA does not know whether or not there is a case classification system, nor whether there are requirements to include statistical data following the documentation of a case. Quantitative and qualitative analysis indicates that some data is collected within certain PIs, but it is not part of a formal mechanism.

Professional training

- **Finding No. 1:** *FAs who have attended a thematic training are more involved in documenting and evaluating suspected cases of HS, IDGP and PMC.*

55% of FAs participated in trainings, the share of those who documented at least one case of HS, IDGP and PMC during the evaluation period being 78.2% compared to 21.8% who did not benefit from such trainings.

- **Finding No. 2:** *Even though 55% of FAs have participated in thematic trainings, 1/5 of them do not know under what conditions a case of HS, IDGP and PMC can be documented.*

Every fifth FA does not know that a case of HS, IDGP and/or PMC can be documented if there is a complaint by the victim or following some reports, including from the media and social networks.

- **Finding No. 3:** *Despite the professional training courses organized by the Ștefan cel Mare Academy and the GIP, the FAs need practical training to recognize, document and evaluate suspected cases of HS, IDGP and PMC.*

Even if, during the reference period, 1 out of 4 FAs participated in courses, trainings, etc. online and offline on hate speech and discrimination and incitement to discrimination, however around 1/10 of FAs qualify 'pacifism' and 'feminism' as forms of hate speech and 1/5 of agents don't know what they are in general. At the same time, according to the qualitative analysis, the small number of cases of HS, IDGP and PMC documented by the FAs is explained by the low level of knowledge and difficulties in documentation: "When I came (to the *focus group meeting*), I did not know so many things"; "I will go into the territory and we will try to document a case, so that we can better see how the process takes place"; "I will pay attention to it in the future." Also, some agents still prefer to document misdemeanors and crimes according to already known patterns: "I think we had at least one case of the ones discussed today, but we did not pay attention to them and because of the large flow of material, we documented it as usual."

Victim protection and preventive actions

- **Finding no. 1:** *FAs' experience of interacting with victims of other types of misdemeanors and crimes enables them to assess the needs of the victim of an PMC case.*

In more than half of the documented cases, FAs informed the victim about the existing protection mechanisms. In 34 cases, FAs who documented a case communicated the existing protection mechanisms to the victim, and in 33 cases they directed the victim or the perpetrator to psychological assistance centers.

At the same time, the Standard Operating Procedure regarding the qualification and investigation of crimes motivated by prejudice of the GIP of the MAI does not address issues related to encouraging reporting.

- **Finding No. 2:** *Although the provisions introduced by the adoption of Law no. 111/2022 and Law no. 73/2022 are new and there is a need to inform the society, no information campaigns have been organized.*

The Committee of Ministers of the Council of Europe recommended that member states have a comprehensive approach to the phenomenon of hate speech, which should be aligned with the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights. Thus, the Committee recommends that in relation to cases of hate speech that are of concern, but are not sufficiently serious, member states apply alternative responses, such as educational activities and raising the level of information and awareness (point 3, letter b, section "Scope, definition and approach" and point 171, section "Organizations of civil society", from the annex of Recommendation CM/Rec(2022)16).

In the period of July 3, 2022 – July 3, 2023, the GIP did not take actions to promote and encourage the reporting of cases of hate speech and incitement to discrimination.

Although there is a need to inform society about the consequences of hate speech, incitement to discrimination and crimes motivated by prejudice, the GIP did not organize information activities during the reference period, and the FAs emphasized the lack of financial resources within the IPI to organize such activities.



RECOMMENDATIONS

TO THE PARLIAMENT OF THE REPUBLIC OF MOLDOVA

Reviewing the legal framework on illegal online content in order to clarify the conditions for restricting access to webpages that contain information that incites violence, hatred or discrimination, or to delete illegal online content.

TO THE GENERAL INSPECTORATE OF POLICE

Internal documentation and evaluation tools

1. Developing an internal guideline/an internal regulation regarding the procedure for documentation, assessment and sanctioning of cases of HS, IDGP and PMC, which refer to: a) ways of initiating the documentation procedure based on incoming reports, including in relation to potential cases from online environment and b) types of evidence required to be collected.
2. Adjusting the Standard Operating Procedure regarding the qualification and investigation of prejudice motivated crimes of the GIP of the MAI according to the new provisions of the CC, introduced by the adoption of Law no. 111/2022 and Law no. 73/2022.
3. Adjusting the Central Data Bank of SIA "RICC" to STI of MAI by including new indexes and fields for contravention cases according to art. 52, para. (3) and art. 70/1 CC, in order to allow the collection of disaggregated data regarding hate speech and incitement to discrimination based on prejudice.
4. Conducting an internal assessment of the documentation, accountability and sanctioning system to identify gaps and initiate a process to adjust it to streamline the FA's response to HS, IDGP and PMC cases.
5. Developing a bilateral notification procedure between the GIP and the FAs in cases of speech that incites hatred and/or incitement to discrimination in the audiovisual media where the authors are guests of the shows (notification of the GIP by the FAs) or moderators (notification of the FAs by the GIP).

Consolidating the FAs' capacities

1. Organizing periodic trainings on the documentation and assessment of potential cases of HS, IDGP and PMC focusing on: a) understanding the three concepts, b) the differences between "hate speech", "insult" and "slander", c) the difference between "incitement to discrimination on grounds of prejudice" and "incitement to discrimination" as a form of discrimination, d) the new provisions introduced in the Contravention Code and Criminal Code through the adoption of Law no. 111/2022 and Law no. 73/2022, e) the documentation and practical analysis of potential cases and the establishment of indicators that demonstrate the reason for prejudice.
2. Organizing practical training activities both for the representatives of the 112 Intervention Service and for the district police officers, based on real cases and the step-by-step explanation of the actions to be taken in a case of HS, IDGP and PMC.
3. Organizing practical workshops for FAs regarding the changes regarding the single record of crimes, criminal cases and persons who have committed crimes.
4. Organizing exchanges of experience between police inspectorates that have documented cases of HS, IDGP and PMC and those that have registered alleged cases.
5. Developing and implementing practical simulations and periodic testing to assess the FS's ability to effectively identify, document and evaluate cases of HS, IDGP and PMC.
6. Periodically assessing the level of intolerance of employees to prevent poor documentation of HS, IDGP and PMC cases and biased communication with victims of HS, IDGP and PMC.

Victim protection and preventive actions

1. Developing an internal protocol regarding: a) communication and information to victims of hate speech, incitement to discrimination and/or crimes motivated by prejudice regarding the existing protection mechanisms and b) assessment of the psychological needs of the victims.
2. Organizing information activities and promotion of the protection mechanism by submitting complaints and notifying the Police in cases of HS, IDGP and PMC.
3. Organizing information and awareness campaigns at national and/or local level regarding what HS, IDGP and PMC present in partnership with other public institutions (General Prosecutor's Office, Ministry of Education and Research, Ministry of Labor and Social Protection, etc.), public authorities (Equality Council, OAP, etc.) and civil society. Within the campaigns, the general public must be informed about the signs that constitute evidence and that can help the victim, in such cases, to file complaints with the Police.
4. Organizing information sessions for representatives of other public institutions regarding the new legal provisions in order to inform and refer cases to the Police.
5. Developing partnerships with non-governmental organizations active in the field of defending the rights of Roma people, LGBTQI people, people with disabilities, elderly people, etc. in order to organize trainings, information campaigns, providing legal, psychological assistance, etc.
6. Creating a webpage or mobile application available in several languages and accessible including for the visually impaired, as a single point of information and contact with a FA capable in this field to obtain information or to report a case of HS, IDGP and PMC.



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