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MOLDOVA

Submission by:

Ewelina Ochab
ADF International
28, Ch. du Petit Saconnex
1209 Geneva, Switzerland

Web: www.adfinternational.org
Email: eochar@adfinternational.org

Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report focuses on the right to life of the unborn, the right to education under international law, and Moldova’s efforts in promoting and defending these rights.

(a) Right to Life

Background

3. Article 24(1) of the Constitution of Moldova of 1994 protects the right to life, stating that “the State shall guarantee to everyone the right to life, to physical and mental integrity.” The right to life under the Constitution is very broad in that the right is meant to be guaranteed to “everyone” and no limits are prescribed by law.
4. Moldova’s abortion legislation follows the Soviet Union (USSR) model in that abortion is available on request through the 12th week of pregnancy¹. Furthermore, following the USSR model, under a 1982 decree abortion was allowed to be performed through the 28th week of pregnancy for health reasons.² In accordance with a 1987 order, abortion was allowed through the 28th week of pregnancy on non-medical (broadly defined) grounds³:

the death of the husband during pregnancy; imprisonment of the pregnant woman or her husband; the number of children exceeds five; divorce during pregnancy; pregnancy as a result of rape; child disability in the family.⁴⁵

This was upheld by Ministerial Order 152 in August 1994.

5. When Moldova joined the WHO in 1995, the government lowered the legal time limit to the 22nd week of pregnancy (on social, medical, and legal grounds). However, abortion is still available up to the 28th week in the case of congenital syphilis or severe congenital malformation⁶ or danger to the health and life of the woman, and on socio-economic grounds.⁷ In order to perform an abortion in the second trimester, an approval is required from a special commission.⁸ The law does not require spousal consent, mandatory counselling, or any waiting period prior to abortion.

¹Rodica Comandant, A project to Improve the Quality of Abortion Services in Moldova, *Reproductive Health Matters* 2005; 13(26):94

² Ibid.

³ Ibid.

⁴ World Abortion Policies, available at:

<http://www.un.org/en/development/desa/population/publications/policy/world-abortion-policies-2013.shtml>

⁵ J. Thomas, Quality of abortion care and counselling in Republic of Moldova. World Health Organization workshop materials, 2001 (unpublished)

⁶ (n 1)

⁷ IPPF, Abortion Legislation in Europe, January 2009, 58

⁸ (n 1)

6. Moldova is struggling with high infant mortality rates of 12.59 deaths/1,000 live births⁹, and high pregnancy and abortion rates among teenagers.¹⁰

Right to life in international law

7. Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) states, "Every human being has the inherent right to life." Furthermore, Article 6(5) of the ICCPR states, "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and *shall not be carried out on pregnant women.*" The ICCPR's prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn. As the *travaux préparatoires*¹¹ of the ICCPR explicitly state, "The principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to *save the life of an innocent unborn child.*"¹² Similarly, the Secretary General report of 1955 notes that the intention of the paragraph "was inspired by humanitarian considerations and by *consideration for the interests of the unborn child.*"¹³
8. The protection of unborn life is also found through an ordinary reading of the language in the preamble of the Convention on the Rights of the Child (CRC). The preamble states, "[T]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, *before as well as after birth.*" Article 1 of the CRC defines a child as "every human being below the age of eighteen years." This provides an upper limit as to who is a child, but does not provide a lower limit on when the status of "child" attaches.
9. Providing access to abortion means that more women suffer from abortion-related complications. There are numerous maternal risks associated with abortion. A major study published in the *British Medical Journal* this year concluded that States with "less permissive" abortion laws "exhibited consistently lower maternal mortality rates."¹⁴ Although the study explains these differences in terms of other independent factors rather than in terms of abortion legislation itself, it nevertheless concludes, "No statistically independent effect was observed for abortion legislation, constitutional amendment or other covariates."¹⁵ Because abortion legislation has no effect on maternal mortality, abortion need not be legalized to protect women's health. Abortion is further associated with a high risk of haemorrhaging, developing

⁹ The World Fact Book, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/md.html>

¹⁰ Unicef, Japan has lowest teen birth rates, available at: <http://www.unicef.org/pon96/inbirth.htm>

¹¹ In accordance with the Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a "supplementary means of interpretation."

¹² Report of the Third Committee to the 12th Session of the General Assembly, 5 December 1957. A/3764 § 18.

¹³ Report of the Secretary-General to the 10th Session of the General Assembly, 1 July 1955. A/2929, Chapter VI, §10.

¹⁴ Elard Koch, Monique Chireau, and Fernando Pliego et. al., *Abortion Legislation, Maternal Healthcare, Fertility, Female Literacy, Sanitation, Violence Against Women and Maternal Deaths: A Natural Experiment in 32 Mexican States*, BMJ OPEN 2015:5 e006013, doi:10.1136/bmjopen-2014-006013, p. 1.

¹⁵ Ibid.

sepsis, and developing injuries to internal organs, including intrauterine perforations.¹⁶

10. Moreover, abortion can never be safe because it takes the life of the unborn child and harms the mother through the loss of her child. It has also been reported that women who underwent abortion are more vulnerable to self-destructive tendencies, depression, and other unhealthy behaviour aggravated by the abortion experience.¹⁷
11. Therefore, Moldova must focus on protecting the right to life of the unborn and on helping women get through pregnancy and childbirth safely, rather than ending pregnancies. Moldova must protect women, girls and children and therefore, take steps to repeal the USSR-based abortion provisions altogether.
12. In order to reduce maternal mortality and teen pregnancy, Moldova also should provide women with access to knowledge-based education about their bodies, healthy behaviours and responsible decision-making. Moldova should redirect resources to improve maternal health and medical infrastructure to solve the problem of high maternal and infant mortality rates.

(b) Right to Education

Background

13. In 2005 a pilot project on Family and Life Education (FLE) was introduced in 35 schools in Moldova.¹⁸ As the Ministry of Education was pleased with the outcome of the pilot project, the Ministry of Education intended to introduce it as a compulsory subject at all schools for grades 1 to 12.¹⁹ Moldova also has introduced a network of peer educators, called Y-PEER. This network aims to promote sexual and reproductive rights.
14. Y-PEER was approved and introduced by the Ministry of Education. However, it is not clear whether parents were consulted about this project.
15. The FLE was aimed to implement life skills education and to include the following:
 - sanitary behaviour in personal hygiene problems, prophylaxis of infectious disease and sexually transmitted diseases, HIV/AIDS, early pregnancy, forming a health aware behaviour etc.²⁰
16. Moldova introduced the FLE in primary and secondary schools. It is imperative that Moldova clarify whether it is possible to opt out from the FLE program in the event that the content goes against the religious values of the student and his/her family.

¹⁶ Gunnel Lindell and Folke Flam, *Management of Uterine Perforations in Connection with Legal Abortions*, ACTA OBSTET GYNECOL SCAND. (1995) May 74(5):373-5, available at <http://onlinelibrary.wiley.com/doi/10.3109/00016349509024431>.

¹⁷ David C. Reardon, Philip G. Ney, Fritz Scheuren, Jesse R. Cogle, Priscilla K. Coleman, Thomas W. Strahan, *Deaths Associated with Pregnancy Outcome: A Record Linkage Study of Low Income Women*, SOUTHERN MEDICAL JOURNAL, (2002) August, 95(8):834-841.

¹⁸ Moldova: Talking About Reproductive Health – in Schools and with Peers, available at: <http://www.unfpa.org/fr/node/6880>

¹⁹ Ibid.

²⁰ Ministry of Education, National Report on the Development of the Education System in Republic of Moldova, Chisinau 2004, 27.

International Law

17. The right of parents to choose education for their children and to educate their children in accordance with their convictions is protected under international law. Article 26(3) of the Universal Declaration of Human Rights states, "Parents have a prior right to choose the kind of education that shall be given to their children."
18. Article 13(3) of the International Covenant on Economic, Social and Cultural Rights is equally explicit in guaranteeing the right to alternative forms of education. It reads:

The States Parties [...] undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
19. Article 18(4) of the ICCPR provides that States must "undertake to have respect for the liberty of parents [...] to ensure the religious and moral education of their children in conformity with their own convictions."
20. Article 18(1) of the Convention on the Rights of the Child states, "Parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child." Article 14(2) requires States to "respect the rights and duties of the parents [. . .] to provide direction to the child in the exercise of his or her right [to freedom of religion] in a manner consistent with the evolving capacities of the child."

Impact of Early Sexual Debut

21. Moldova has very high teenage birth rates: 38 births per 1,000 women,²¹ and very high teenage abortion rates (especially in Transnistria region).²² Sexual abuse is a real problem in Moldova. In 2006, a study revealed that 66% of those interviewed in a micro-assessment of adolescents were believed to be victims of violence and "adolescents most often associate violence with sexual abuse and physical aggression (79%)".²³ Another study from 2011 revealed that 53.7% of the interviewed women between the age of 15 and 24 were abused (physically, psychologically or sexually) by their partners.²⁴
22. Early sexual debut is a serious problem that leads to devastating health implications, and severely undermines the wellbeing of Moldova's youth. The consequences of early sexual debut have a disproportionate impact on young girls because their bodies are not developmentally prepared for pregnancy, in addition to the fact that they are more susceptible to HIV and other STIs due to biological factors.

²¹ Japan has lowest teen birth rates, available at: <http://www.unicef.org/pon96/inbirth.htm>

²² Committee on the Elimination of Discrimination against Women considers report of the Republic of Moldova (30 September 2013), available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13811&LangID=E>

²³ Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, CRC/C/MDA/3, 216

²⁴ Statistica Moldovei, Violence against Women in the Family in the Republic of Moldova, 2011, available at: www.statistica.md.

23. Education on responsible sexual behaviour in conjunction with parents, in addition to community and religious leaders, is of vital importance. Teaching in the classroom about abstinence and fidelity is very important to inform young people about the risks associated with early sexual debut and multiple concurrent partners, and to encourage healthy relationships.

(c) The Family

Background

24. In Article 48(2) of the Constitution, Moldova recognises the definition of marriage as a union between a man and a woman.²⁵ Same-sex partnership is not recognised in Moldova.
25. Moldova faces pressures from LGBTI groups²⁶ to amend its law on recognizing same-sex partnership and “same-sex marriage.”
26. Moldova’s adherence to traditional values is fully compatible with Article 16 of the Universal Declaration of Human Rights and is in accordance with the religious, cultural, and ethical convictions of its population. Under international law there is no requirement for Moldova to amend its understanding of marriage as a union between a man and a woman.

(d) Recommendations

27. In view of the above, ADF International recommends the following:
- Take steps to recognize and honour the national and international obligations to protect the right to life from conception to natural death;
 - Work to end abortion in accordance with international obligations to protect the life of the unborn;
 - Introduce additional safeguards on abortion services, e.g., mandatory counselling prior to making the final decision and waiting period prior to abortion;
 - At a minimum, maintain the requirements for obtaining an abortion;
 - Review the sexuality education to ensure that it is age-appropriate and does not violate parents’ wishes;
 - Ensure that parents have an option to opt out their children from sexuality education if its content violates the religious values of the students and their parents.
 - Continue to affirm the definition of marriage as a union between a man and woman and support stable marriage.

²⁵ “The family is founded on the freely consented marriage of husband and wife, on the spouse's equality of rights and on the duty of parents to ensure their children's upbringing and education.”

²⁶ E.g.: GenderDoc-M, HomoDiversus Pro.