LEGAL ASPECTS OF PROTECTION OF WOMEN AND GIRLS WITH DISABILITIES FROM VIOLENCE AND VIOLENT RELATIONS

ASPECTE LEGALE PENTRU PROTEJAREA FEMEILOR ȘI FETELOR CU DIZABILITĂȚI DE VIOLENȚĂ ȘI RELAȚII VIOLENTE

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ABSTRACT: *Existing legal mechanisms for protecting the rights and interests of women and girls with disabilities from gender-based violence are analysed in the paper. It contains the research and analysis of legal provisions of the current legislation of the Republic of Moldova, international human rights standards and the legislation of the European Union. The paper provides examples of the ECHR practice in cases affecting the rights and interests of women and girls with disabilities who have suffered from violence. A list of proposals is formulated to improve the legal mechanisms for protecting women with disabilities as subjects of law, in particular, improving the legal framework for the development of advisory and legal services for women with disabilities, developing institutional guidelines to respond to gender-based violence cases, based on human rights-based approach.*

Keywords: *women with disabilities; gender-based violence; women's human rights; intimate partner violence; legislation on gender-based violence.*

REZUMAT: *În lucrare sunt analizate mecanismele legale existente pentru protejarea drepturilor și intereselor femeilor și fetelor cu dizabilități împotriva violenței de gen. Conține cercetarea și analiza prevederilor legale din legislația actuală a Republicii Moldova, standardele internaționale privind drepturile omului și legislația Uniunii Europene. Lucrarea oferă exemple de practică CEDO în cazurile care afectează drepturile și interesele femeilor și fetelor cu dizabilități care au trecut prin violență. Se formulează o listă de propuneri pentru îmbunătățirea mecanismelor juridice de pro-*

tecție a femeilor cu dizabilități ca subiecte de drept, în special, îmbunătățirea cadrului legal pentru dezvoltarea de servicii de consiliere și juridice pentru femeile cu dizabilități, elaborarea de ghiduri instituționale pentru a răspunde cazurilor de violență în bază de gen, bazate pe o abordare bazată pe drepturile omului.

Cuvinte cheie: *femeile cu dizabilități; violența de gen; drepturile omului ale femeilor; violența partenerului intim; legislația privind violența de gen.*

Introduction

The prohibition of gender-based violence is a fundamental principle enshrined in international and regional law, reflecting the global commitment to protect the rights and dignity of women and girls. Both international and regional human rights documents call on the states to implement effective measures to prevent violence, support survivors, and hold perpetrators accountable. Overall, the prohibition of gender-based violence in international law is supported by a robust framework of treaties, conventions, and resolutions. These instruments collectively affirm the international community's commitment to ending violence against women and ensuring their right to live free from fear and harm.

Results obtained and discussions

One of the cornerstone instruments in this regard is the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Although CEDAW does not explicitly mention violence against women, the CEDAW Committee has interpreted it to include gender-based violence as a severe form of discrimination. Violence against women is a human rights violation that states are obligated to prevent, investigate, and punish it. The prohibition of gender-based violence is further clarified by UN CEDAW General Recommendation No. 19 and upgrading UN CEDAW General Recommendation No. 35 as of 2017. General Recommendation No. 35 states that "opinio juris" and state practice are evolving to elevate existing standards on the prohibition of gender-based violence against women to the status of customary international law [1, p. 1].

To reinforce the commitments of the states to prevent and respond to violence against women regional human rights conventions were developed and adopted to protect women's rights on the life free of violence. The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará) explicitly recognizes women's right to live free from violence and discrimination. Similarly, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) includes comprehensive provisions to protect women from violence, including economic violence. The Istanbul Convention, formally known as the Council of Europe Convention on preventing and combating violence against women and domestic violence, is another significant instrument. It sets out detailed measures for the prevention of

violence, protection of victims, and prosecution of perpetrators. The convention emphasizes the importance of addressing the root causes of gender-based violence, such as gender stereotypes and inequality.

Another international human rights instrument, the United Nations Convention on the Rights of Persons with Disabilities (CRPD) explicitly emphasizes the prohibition of violence against individuals with disabilities. Article 16 of the CRPD calls for the protection of persons with disabilities from all forms of exploitation, violence, and abuse, both in public and private settings. This includes physical, sexual, and psychological violence, as well as the prevention of harmful practices, neglect, and trafficking. States, that recognized by international law as duty bearers, are obligated to adopt appropriate legislative, administrative, and other measures to ensure the safety and dignity of persons with disabilities, fostering an environment where they can live free from violence and discrimination. The UN Convention affirms that violence against individuals with disabilities is a human rights violation, and it demands comprehensive action to prevent, address, and remedy such abuses.

The Republic of Moldova ratified core international and regional human rights conventions: UN Convention on the Elimination of All Forms of Discrimination against Women was ratified on 1 July 1994, United Nations Convention on the Rights of Persons with Disabilities – on 21 September 2010, the Council of Europe Convention on preventing and combating violence against women and domestic violence on 31 January 2022. Thus accepting the obligations to respect, protect and fulfill human rights of women with disabilities.

At the global level, several researches have been done to identify the frequency of violence among women with disabilities and its comparison with women without disabilities. The main conclusion found that women with disabilities experienced higher frequencies and risks of gender-based violence from partners compared to women without disabilities. Among the studies on various forms of violence, 81.3% of those examining financial violence, 78.5% of those studying physical violence, 75% of those investigating physical form and sexual form of violence, 73.3% of those focused on sexual violence, and 50% of those addressing any type of violence, found a significant association with disability [2, p. 2-3]. Women with disabilities are likely to experience abuse over a longer period of time and to suffer more severe injuries as a result of the violence. Another analysis of the association between disability and intimate partner violence from seven violence-prevention programmes in low- and middle-income countries indicated that women with disabilities were nearly twice as likely to report intimate partner violence than women without disabilities [3, p. 4].

Despite the high prevalence of violence, women with disabilities remain largely invisible in discussions about gender-based violence. This invisibility is compounded and grounded by a lack of data and research on the specific experiences of these women. According to the data provided by the Ministry of Labour and Social Protection of the Republic of Moldova, 12,962 cases of domestic violence were registered by the social welfare system in the period 2020-2023, the majority of victims were women (92%) and persons with disabilities constituted 4% (518 cases) of domestic violence

cases [4]. 29 women with disabilities (2,4%) of the total number of women-beneficiaries applied to the leading women's service provider in Moldova "Centrul de drept al femeilor" [5].

Violence against women and girls with disabilities is a critical issue that intersects both gender-based and disability-based discrimination. Special attention to the prevalence of multiple and intersectional discrimination against women with disabilities is given at several country reviews given by UN Committee on the Rights of Persons with Disabilities [6, para17] [7, para 9].

Women with disabilities face unique challenges and barriers that increase their vulnerability to various forms of violence, including domestic violence, emotional abuse, and sexual assault. Women with disabilities often experience higher rates of violence due to factors such as isolation, dependency on caregivers, and societal stigma. The abuser of women with disabilities is often their caregiver, an intimate partner, or a family member, at home or in residential institutions. Female with disabilities are often confined in abusive relationships with partners or family members due to their financial, social and mobility dependence on them for survival [8]. As a result, these women frequently do not report the violence they experience. The justice system is often physically inaccessible and lacks reasonable accommodation, leaving them without proper access to legal protection and representation. Law enforcement and legal professionals are often unprepared to address cases of violence against women with disabilities, and their testimony is frequently not taken seriously or deemed credible by the justice system [9]. Additionally, information about support services for women is inaccessible, especially for women with intellectual and psychosocial disabilities.

Several studies report additional causes of unreported violence against women with disabilities [10], [11]. The stigma surrounding the reporting of sexual and gender-based violence, coupled with the fact that perpetrators are sometimes family members, can deter women from speaking out, especially in the presence of a family member. Moreover, law enforcement often views women with intellectual disabilities as unreliable witnesses, which may lead to a lack of investigation into the crime.

Women and girls with disabilities are also at heightened risk of gender-based violence and other forms of abuse due to harmful social stereotypes and biases that dehumanize, infantilize, exclude, or isolate them. These biases increase their vulnerability to sexual violence and institutionalized abuse. Moreover, sexual and gender-based violence can contribute to a higher incidence of disability among women.

The European Court of Human Rights has addressed cases involving violence against women with disabilities in Moldova and Romania, highlighting systemic issues and the need for enhanced legal protection for women with disabilities against gender-based violence. The case of G.M. and Others v. the Republic of Moldova involves three women with intellectual disabilities of varying levels of severity, who have been institutionalised in the Bălți neuropsychiatric residential institution and who were raped, passed forced sterilizations and abortions on various occasions by the head doctor of one of the units. The case emphasizes the intersection of gender

and disability discrimination [12]. T*he Court found that the Moldovan* authorities had failed to protect the applicants from inhuman and degrading treatment, violating Article 3 of the European Convention on Human Rights. At the case I.C. v. Romania the applicant, a young woman with an intellectual disability, was sexually abused by several men. The Romanian authorities failed to conduct an effective investigation, doubting her credibility due to her disability. The Court reiterates that the obligation of the state authorities are to secure to everyone the rights and freedoms defined in the Convention and take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals. In the case of people in a vulnerable position, including people with disabilities, the Court held that the authorities must show particular vigilance and afford increased protection in view of the fact that such individuals' capacity or willingness to pursue a complaint will often be impaired (see case B. v. Romania, no. 42390/07, § 50, 10 January 2012). The European Court of Human Rights found a violation of Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private and family life), emphasizing the state's duty to protect vulnerable individuals from such abuse [13].

These cases illustrate the challenges women with disabilities encounter in European countries, including systemic discrimination and barriers to accessing justice. The ECHR's judgments underscore the necessity for these states to implement effective measures to protect the rights of women with disabilities and ensure their safety and dignity.

Conclusions

Addressing violence against women with disabilities requires a multifaceted approach. This includes ensuring their meaningful participation in decision-making processes, improving accessibility to support services, and promoting awareness about their rights. It is essential to tackle social and environmental barriers that hinder their full and equal participation in society. Civic society organizations and the opinion of the Special Rapporteur on violence against women, its causes and consequences asserts that the primary challenge in combating gender-based violence against women is the incomplete integration and application of international norms, including the Convention and other instruments, at the domestic level [1]. This issue should be more robustly tackled through the various measures, such as reviewing the sufficiency of the current legal framework, regular data collection and persistent monitoring, integrating the intersectional approach to policy making and inclusion of disability criteria in the measures to address gender-based violence.

To improve legal protection mechanisms against gender-based violence for all women and girls, including for women with disabilities in Moldova, several key areas need attention. These include legislative, and institutional measures, addressing negative stereotypes and cultural traditions to ensure comprehensive and effective safeguards, particularly for vulnerable groups such as women with disabilities. It is recommended to strengthen and improve the legislation through harmonization with international standards: align national laws with international instruments such as

the Istanbul Convention and the Convention on the Rights of Persons with Disabilities (CRPD); implement and ensure proper monitoring of the recommendations provided by CEDAW and CRPD; ensure that gender-based violence laws and programs explicitly cover all forms of violence (psychological, economic, and institutional violence), especially those specific forms and causes that are relevant for women with disabilities; Include provisions that address the unique needs of women with disabilities, ensuring accessibility and tailored responses that could be done by introducing special protection measures and approach to identify cases and respond to violence against women with multiple vulnerabilities - older women, women with disabilities, including mental disabilities, LGBTI women, immigrant women, refugee women, asylum-seeking women, women without a residence permit, rural women, commercial sex workers, women with addictions at the Law No. 45 from 01.03.2007 on Preventing and Combating Family Violence [14].

The National Agency for Preventing and Combating Violence against Women and Domestic Violence in Moldova, that was established on 2 January 2024 as a government structure with a mandate to ensure comprehensive and effective efforts to combat violence against women and domestic violence, will replace the functions of the previous structure – the Interministerial Coordinating Council for Preventing and Combating Violence against Women. It is recommended to integrate the response to intersectoral forms of gender-based violence into the priority Strategy of the National Agency for 2024-2027, with targeted actions to address cases of violence against women with disabilities [15].

Worth to note that statistical and administrative data collected at the national level in many countries are insufficient to analyse the root causes of violence against women with disabilities, the statistical data are not harmonized between various systems and are not disaggregated according disability criteria, gender of the aggressor, form of violence, relationship of the perpetrator with the victim and geographical location. The institutional and legislative approach should be strengthened through development of normative framework and interinstitutional instructions to enhance data collection on all forms of gender-based violence, including economic and psychological violence. This data should be disaggregated by sex, age, ethnicity, geographical location, disability, and the relationship between the victim and the perpetrator. This will enable relevant state institutions and public officials to monitor the effectiveness of legislation, policies, and practices in preventing and reducing gender-based violence. Establish independent monitoring mechanism to assess the effectiveness of protection mechanisms and propose recommendations for improvements for women with different types of vulnerabilities is also among the measures to be recommended for implementation.

To address the limited access to justice for women with disabilities who experienced physical, sexual, psychological or economical violence based on gender it is recommended to reinforce at the normative framework the obligations to organise special training programs for police, lawyers and law enforcement; provide mandatory, ongoing training for police, judges, and prosecutors on gender sensitivity, disability rights, consensual approach to sexual violence and handling cases involving

vulnerable individuals; establish strict accountability measures for law enforcement and judicial personnel who fail to act or display bias and to develop protocols to ensure that investigations prioritize the safety, dignity, and participation of victims, particularly those with disabilities.

Another direction that needs to be strengthened is enhancing accessibility and support services that require boosting accessible reporting channels for women with disabilities, including sign language interpreters, simplified communication tools, and physical access to police stations and courts; strengthen partnerships between law enforcement, healthcare providers, and NGOs to provide holistic support, including shelter, counseling, and legal aid; deploy dedicated and trained teams of professionals at the mobile support units to reach victims in rural and remote areas where women support services are limited.

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