



**COUNCIL ON THE PREVENTION AND
ELIMINATION OF DISCRIMINATION
AND ENSURING EQUALITY**

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**Submission prepared by the Council on the Prevention
and Elimination of Discrimination and Ensuring
Equality for the Universal Periodic Review of the
Republic of Moldova, 26th session**

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I. This report is submitted by the Council on the Prevention and Elimination of Discrimination and Ensuring Equality (hereinafter the Council) within Cycle II of the Universal Periodic Review of Moldova. The Council is an independent public institution established on 31 July 2013.¹

Summary

II. Key recommendations for the Moldovan Government: (i) enable the Council on the Prevention and Elimination of Discrimination and Ensuring Equality with investigative and sanctioning powers; (ii) allocate sufficient funds for the Council to effectively exercise its functions; (iii) adopt positive measures conducive to substantive gender equality in politics, employment and family life; (iv) amend the legal framework to ensure that persons with disabilities enjoy legal capacity and exercise their rights on equal basis with others; (v) adopt legislative and other measures to prevent and combat discrimination on the grounds of religion and belief; (vi) develop and adopt policies to prevent and eliminate stigmatization and discrimination of Roma; (vii) adopt legislative and other measures to effectively investigate and prosecute hate crimes.

1. Anti-discrimination legislation

- 1.1. In 2012, the Republic of Moldova adopted law no. 121 on ensuring equality, establishing the legal and institutional framework for combating discrimination. The law prohibits discrimination in the political, economic, social, cultural and other spheres of life. The criteria protected from discrimination are race, color, nationality, ethnic origin, language, religion and beliefs, gender, age, disability, opinion, political affiliation or any other similar criterion. The list of criteria is indicative, not exhaustive.
- 1.2. Established in compliance with the Law no. 121, the Council is an independent institution specialized in prevention and elimination of discrimination and ensuring equality. The mandate of the Council relates primarily to the examination of complaints alleging discrimination, assessment of legislation from the equality perspective and promotion of equal opportunities.
- 1.3. Analysis of the activity of the Council reveals the need to eliminate the operational impediments faced by the institution. In the process of exercising its mandate, the Council must verify the accuracy of the information presented, which requires field visits, including to places where persons are deprived of liberty (penitentiaries, medical institutions). The power of on-site investigation will enable the Council to confirm or refute the facts stated in complaints.
- 1.4. The Council is competent only to find offences with discriminatory elements, the application of sanctions being the prerogative of the courts. The power to apply administrative sanctions for discrimination would upscale the practical implementation of anti-discrimination legislation.
- 1.5. A critical issue is the need to provide the institution with an office corresponding to the standards of safety, health and accessibility. The current office of the Council does not provide adequate conditions necessary for the proper conduct of the work of the staff of the institution and does not comply with accessibility requirements.

Recommendations:

- 1.6. Amend the legislation to empower the Council with investigation and sanctioning powers;
- 1.7. Ensure proper funding for the institution in compliance with the Paris Principles relating to the Status of the National Human Rights Institutions.

2. Discrimination against women

- 2.1. **Women are under-represented** in Parliament, Government, other central and local public authorities. In 2015, women accounted for 20.7% in the Moldovan Parliament and 25% in the

¹ For further information please see www.egalitate.md

Government of the Republic of Moldova. The draft bill on gender quotas, welcomed by the Council,² is pending second reading approval of the Parliament since July 2014.

- 2.2. **Legal provisions and policies**, originally designed to reduce the factual inequalities between women and men and to compensate for the disadvantages suffered by women for their role in childcare, **are over-protective**. Women are often the ones who assume responsibility for childcare. The statistical data reveals that the employment rate of women with children under the age of two represent 15.3%, compared to 53% for men. In addition, the society increasingly recognizes the importance and need to engage both parents in childcare. In this respect, the law shall encourage men to get involved in childcare and to support women return as soon as possible on the labor market.
- 2.3. The labor law provides for the right to leave for childcare up to 3 and up to 6 years with the possibility of preserving the job, as well as a number of guarantees for persons benefiting from these leaves. This imposes a fairly large burden on the employer and generates situations of discrimination against women in employment. The complaints examined by the Council reveal discriminatory practices, as well as the conclusion of labor contracts for a fixed period of time with women and the termination of the employment relationship in case of pregnancy.³ In addition to that, the Council found plenty cases of employment advertising that are discriminatory on the ground of sex.⁴
- 2.4. Another obstacle to achieving equality between women and men is the **domestic violence against women**, manifested in the form of family violence and sexual aggression. In most cases, the victims of this violence do not receive any effective protection. Although the legal framework provides for protective measures for victims of domestic violence, as well as sanctions for the perpetrator (for committing acts of violence), most often women-victims do not have access to the respective legal remedies.
- 2.5. Because of the **persistence of stereotypes and preconceived ideas concerning the role of women in the family**, the authorities do not appreciate the seriousness of the problem of domestic violence and do not react promptly when being addressed with complaints by victims. The Council is concerned about the persistence of this discriminatory attitude towards women leading to state's failure to investigate effectively cases of domestic violence and ensure equal protection by the law.⁵

Recommendations:

- 2.6. Adopt positive measures by introducing a minimum quota to ensure a fair representation of women in the decision-making process;
- 2.7. Remove the over-protective provisions from the labor legislation and promoting policies supporting the reconciliation between the professional and personal life in order to ensure gender equality;
- 2.8. Adhere to the Council of Europe Convention on preventing and combating violence against women and domestic violence;
- 2.9. Strengthen efforts to prevent, investigate and punish all forms of violence against women.

² See the opinion of the Council, issued on 19.05.2015, available online at

<http://egalitate.md/index.php?pag=news&id=832&rid=737&l=ro>

³ Decision of 19.06.2014 on case 105/2014; Council Annual Activity Report for 2014, page 20. Available online:

<http://egalitate.md/index.php?pag=page&id=883&l=en>.

⁴Decisions on cases 041/13 and 050/14. Council Annual Activity Report for 2014, page 20. Available online:

<http://egalitate.md/index.php?pag=page&id=883&l=en>.

⁵ Decision of 30.10.20147 on case 098/14, available online at

http://egalitate.md/media/files/files/decizei_098_14_depersonalizat_6424837.pdf.

3. Discrimination against persons with disabilities

- 3.1. **Legal capacity of persons with mental disabilities:** the Republic of Moldova adopted Law no. 60 on social inclusion of people with disabilities, recognizing their legal capacity in the same manner as for the others. Moreover, the provisions governing legal capacity do not comply with the standards of the Convention on the Rights of Persons with Disabilities. Civil legislation in force recognizes only two situations - full capacity or lack of capacity. This generates negative consequences for people with mental health problems, who can be declared, incapacitated and placed under guardianship.
- 3.2. With the deprivation of legal capacity, these persons are deprived of the possibility to exercise their most fundamental rights - the right to vote, the right to marry, the right of access to justice and the right to decide on medical treatment. All decisions are made by the guardian substituting the person, completely ignoring the will of the person under guardianship.
- 3.3. The Council is concerned that the legislation does not provide for an individualized approach, based on assessing the actual level of ability of individuals to make conscious decisions. Although a bill has been drafted that provides for the introduction of supported decision-making mechanisms for the exercise of their legal capacity, this draft maintains the system of guardianship.
- 3.4. **Voting rights:** the national legislation correlates a person's right to participate in the political and public life with its legal capacity. Under the Electoral Code, the persons declared incapacitated by a final judgment of the court, do not have the right to vote. This negatively affects especially people with mental disabilities. Since the person suffering from a mental disease or impairment is declared incapable by a court decision, he/she automatically loses the right to express his/her choice by voting in elections or referendum. Therefore, the person is excluded from political participation, regardless of the actual and individual functional capacity. In addition, the law on political parties provides that political parties can be established only by the citizens entitled to vote. Accordingly, the exclusion from the right to vote of persons under guardianship also generates a ban on any other political activities.
- 3.5. People with disabilities should be provided with the opportunity to exercise their right to vote either directly or through a freely chosen representative. In this regard, a draft law providing for the removal of these restrictions was voted in second reading by the Parliament, but was not yet promulgated by the President of the country.
- 3.6. **Accessibility of infrastructure and information:** a challenge in the field of social inclusion of persons with disabilities relates to ensuring the accessibility of buildings, public transportation and information. Not adapting these objects of the physical environment to the needs of people with disabilities constitutes barriers to exercising their fundamental rights on an equal basis with others. During its activity, the Council has noted the inaccessibility of public and social institutions buildings for the people with disabilities in 16% of discrimination cases. Although the legal framework provides for quite high standards of accessibility, the problem lies in the failure to implement in practice or faulty implementation of these regulations.
- 3.7. **Assistance for persons with disabilities:** by amending Law no. 156 on state social insurance pensions, it was decided to exclude the period of care for people with severe disabilities from the contribution period. In 2013, the Regulation on organization and operation of Social Service "Personal Assistance" has entered into force. This Regulation provides for the possibility of the people taking care of persons with disabilities to conclude individual labor contracts with the local authorities. In this way, this period is remunerable and included in the contribution period required to acquire pension rights.
- 3.8. The discrepancy between these regulations has generated an unfavorable situation for people who have looked after a person with disabilities in the period since the amendment of the law and entry into force of the Regulation. For these individuals, the period of care for the person with disabilities is not considered a contributory one. In this regard, the Council has noted the

discrimination of parents by association with their children with severe disabilities.⁶ This discrimination continues even today because the service, being implemented gradually, is not available to everyone. In 2014 there were 1,542 personal assistants who were looking after 1571 persons with disabilities. The total number of people with severe disabilities at that time amounted to 27,919 people.⁷ Correlating these data, it is obvious that there is a significant number of individuals providing personal assistance not covered by this service.

Recommendations:

- 3.9. Abolish the substitution model in the decision-making process and establish the supported decision-making model along with corresponding implementation mechanism;
- 3.10. Abrogate discriminatory restrictions to vote and ensure the exercise of political rights by all persons with disabilities;
- 3.11. Implement an effective mechanism of sanctioning non-compliance with accessibility standards;
- 3.12. Develop and implement a new strategy on the inclusion of persons with disabilities, ensuring adequate funds for ensuring accessibility of infrastructure and information.
- 3.13. Adopt positive transition measures to include the period of care for a person with severe disabilities in the contribution period until the full implementation of the service;
- 3.14. Amend the legal framework to determine local public authorities to plan adequate financial resources to support the implementation of social service "Personal Assistance".

4. Discrimination on the ground of conscience, thought and religion

- 4.1. The special law governing freedom of conscience, thought and religion directly **determines for the Orthodox religion a privileged position over other religions**. Article 15 of Law no. 125 expressly recognizes the special importance and leading role of the Christian Orthodox religion and the Orthodox Church in the Republic of Moldova.
- 4.2. Enshrining the state attachment to a particular religion in law undermines the role of other religions and leads to discrimination against representatives of religious minorities. The Council has examined cases when the **local public authorities have banned the assemblies of religious minority cultures, without an objective and reasonable justification**.⁸ Such actions on behalf of the authorities are discriminatory and violate the freedom to manifest religion and freedom of association.
- 4.3. In addition, minority religious groups face difficulties registering their religious community because the law imposes formal requirements on unjustified grounds of nationality and domicile. This approach is discriminatory and violates foreigners' right to free expression of religion or religious beliefs.
- 4.4. Observing the freedom of conscience, thought and religion of all people is a challenge also in education. **In its case law, the Council found practices of harassment of students with atheistic beliefs by teachers**.⁹

Recommendations:

- 4.5. Adjust the legislation to ensure the observance of freedom of conscience, thought and religion for everyone;

⁶Decision of 13.02.2014 on the case 030/2013, available online at

http://egalitate.md/media/files/files/decizii_fin_conf_cauza_nr_030_catre_das_si_mmpsf_2330661.pdf.

⁷Annual Social Report for 2014. The Ministry of Labour, Social Protection and Family, p. 160. Available online:

<http://www.mmpsf.gov.md/sites/default/files/document/attachments/rsa2014ro.pdf>.

⁸Decision of 21.01.2014 on the case 029/2013, available online at

http://egalitate.md/media/files/files/decizia_cauza_nr_029_2013_cultul_penticostal_9910224.pdf.

⁹Decision of 15.10.2014 on the case no. 164/2014, available online at

http://egalitate.md/media/files/files/decizii_nr_t_i_164_final_438186.pdf.

- 4.6. Revise the course on religious education from the perspective of diversity, equality and non-discrimination.

5. Discrimination against Roma

- 5.1. **Roma people represent the most disadvantaged minority group in Moldova.** Although, the Government has recently finalized the implementation of the Action Plan in support of the Roma population (2011-2015), the effective exercise of rights of Roma remains a challenge for national authorities.
- 5.2. The Council is concerned about the **persistence of stereotypes and discriminatory attitudes of the majority of population towards the Roma.**¹⁰ These perceptions lead to discrimination and exclusion of the representatives of this ethnic group in the labor market, in education, in access to healthcare services and in other social spheres. Roma women are subject to double discrimination because of their ethnicity and sex. The complaints submitted to the Council confirm the persistence of discrimination of Roma people in access to goods and services available to the public.¹¹
- 5.3. The presence of ethnicity and race prejudices among the representatives of the public authorities generates serious forms of discrimination. In two examined cases, the Council found racial discrimination in the actions of the employees of internal affairs bodies through racial profiling.¹²

Recommendations:

- 5.4. Develop and implement a comprehensive policy for the support of Roma people, ensuring allocation of corresponding resources.

6. Legislation on hate crimes

- 6.1. The criminal law in force stipulates only “social, national, racial or religious hatred” as reasons for hatred. These reasons serve as aggravating circumstances for any of the criminal offenses provided for in the special part of the Criminal Code. For a number of crimes, the reasons for social, national, ethnic or religious hatred constitute qualifying signs of their composition. However, the criminal law does not recognize the offences based on hatred and prejudice as criminal acts in themselves. Prosecution of hate crimes is possible only if these resulted in consequences provided by law.
- 6.2. Hate acts, which do not result in considerable physical or material damages, are qualified in most cases as misdemeanors/offences. The Code of Administrative Offences does not include reasons of hatred and prejudice and establishes symbolic sanctions that do not restore the justice proportionally and efficiently following harmful events based on hatred or prejudice.
- 6.3. In order to overcome these gaps in the legislation, a draft law criminalizing offenses and crimes motivated by prejudice, contempt or hatred was drafted. The draft expands the list of grounds for hatred and prejudice, covering all the criteria that are protected by anti-discrimination legislation. Although this initiative is a significant step in the implementation of international obligations of the Republic of Moldova, it is necessary for the draft law in question to be reviewed and improved. In this regard, the Council has submitted the necessary recommendations within the opinion submitted to the Ministry of Justice.

Recommendation:

- 6.4. Adopt the legal framework to ensure protection against all illegal actions based on hatred and prejudice.

¹⁰ Decisions of 13.10.2014 on the case no. 159/2014, available online at http://egalitate.md/media/files/files/decizia_cauza_renato_usatii_r_5487969.pdf. Decision of 28.09.2015 on the case no. 293/15, available online at http://egalitate.md/media/files/files/decizie_293_2015_3555799.pdf.

¹¹ Decision of 13.02.2015 on the case no. 190/2014, available online at http://egalitate.md/media/files/files/decizie_190_2015_2000159.pdf.

¹² Decision of 28.05.2015 based on the case no. 239/2015, available online at http://egalitate.md/media/files/files/decizie_239_2015_depersionalozat_6318337.pdf.