



**CONSILIUL PENTRU PREVENIREA ȘI ELIMINAREA DISCRIMINĂRII
ȘI ASIGURAREA EGALITĂȚII**

**СОВЕТ ПО ПРЕДУПРЕЖДЕНИЮ И ЛИКВИДАЦИИ ДИСКРИМИНАЦИИ И ОБЕСПЕЧЕНИЮ РАВЕНСТВА
COUNCIL ON THE PREVENTION AND ELIMINATION OF DISCRIMINATION AND ENSURING EQUALITY**

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**DECISION
from 23 October 2018
Case No. 69/18**

Members of the Council present at the deliberative hearing:

Svetlana DOLTU – member
Andrei BRIGHIDIN – member
Victorina LUCA – member
Evghenii Alexandrovici GOLOȘCEAPOV - member

having examined, in a public hearing, written and oral submissions of the
Petitioners: XXXXX and XXXXX on behalf of their minor son
Respondent: (.....) chairwoman of the preschool institution **deliberated in a public hearing, regarding the following,**

I. Subject matter of Petition

Discrimination of a child within the education system.

II. Admissibility of the Petition

The petition complies with the requirements set forth in art. 13 of the Law on ensuring equality No. 121 from 25.05.2012 and does not attract application of exceptions to inadmissibility stipulated in the par. 42 of the Law on the activity of the Council for prevention and elimination of discrimination and ensuring equality No. 298 from 21.12.2012.

III. Submissions by parties

Petitioners' submissions

3.1 The Petitioners affirm that their son was not involved in the activity which took place on 15 YYYYYY at the kindergarten he attends. The Petitioners alleged that failure to involve their child into this activity is due to the fact that their son is shy and reserved, does not speak clearly and at times expresses himself in the Russian language. They affirmed that kindergarten teachers ZZZZZZ, placed the child into another group when the event started. The Petitioners claim that as a result their child was out of spirits and asked his mother to take him home, because he does not wish to go to the kindergarten any longer. The child said he is upset with the children from the kindergarten, because they will receive medals and balloons, whereas he will not. The Petitioner noted that it was not the first time that their child is excluded from participation at events organised by the kindergarten.

Respondent's submissions

3.2 The Respondent confirmed that on the date of YYYYYY their institution organised a theoretical-practical seminar with the participation of all managers of preschool institutions from the rayon, entitled „Psychopedagogical Health-harmony, educating and training for a healthy lifestyle and practice of sports”. The Respondent noted that this seminar had as its aim to present the most beautiful skills and abilities developed by the children.

3.3 The Respondent denies that the child was brought into another group. She explained that for participation at the event, the best prepared children were selected, whereas other children, including the Petitioner's son, were taken outside for a stroll on the terrain of the kindergarten, by teachers from all other groups.

- 3.4 The Respondent affirmed that after the event, the kindergarten teacher of this group ZZZZZ gathered all children (both participants and non-participants) to hand them a chocolate medal, however the Petitioner's son was missing. It was noticed that the mother, without informing anyone, took the child home, and thus the medal was given to the mother to be handed to her child.
- 3.5 The Respondents noted that from the total number of 76 children, who attend the preschool institution, 32 children of different ages participated in the activity from YYYYY. At the same time, they affirmed that of the 25 children from the preparatory group which is attended by the Petitioner's son, 14 children were selected (the most energetic and courageous for participation at the sports activities and entertainment), and from the upper kindergarten group 12 children were selected (with musical abilities), from middle groups 6 children were selected (with theatrical abilities).
- 3.6 The Respondent affirms that prior to this the child of the Petitioner took part in all internally organised events (matinees, celebrations, entertainment activities etc.).

IV. Relevant national and international law

- 4.1 **The Constitution of the Republic of Moldova, in art. 16 par. (2)** guarantees the right to equality, and all the citizens of the Republic of Moldova are equal before the law and public authorities, regardless of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin.
- 4.2 **Law on ensuring equality No.121 from 25.05.2012 at art. 1 par. (1)** stipulates that the purpose of this law is to prevent and combat discrimination and to ensure the equality of all persons on the territory of the Republic of Moldova in the political, economic, social and cultural spheres of life, regardless of race, colour, nationality, ethnic origin, language, religion, sex, age, disability, opinion, political affiliation or any other similar criteria; **art. 2** defines discrimination as any distinction, exclusion, restriction or preference in the rights and freedoms of an individual or a group of individuals, as well as the support of the discriminating behaviour based on real or supposed criteria stipulated in the current law; reasonable accommodation – any modification or necessary and adequate adaptation, which do not impose a disproportionate or unjustified task when necessary to ensure that a person, in cases established by the law, may exercise his/her fundamental rights and liberties on equal conditions with others; **art. 3** envisages that subject to discrimination may be natural persons and legal entities from private and public spheres; **art. 9 par. (1) let. b)** education institutions shall guarantee the protection of the principle of non-discrimination within the educational process.
- 4.3 **Law on the rights of the child No. 338 from 15.12.1994 art. 2 par. (1)** the state shall guarantee to every child an adequate level of life for his/her physical, intellectual, spiritual and social development. **art. 3** all children are equal in their rights regardless of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin; **art. 7** every child is entitled to protection of his/her dignity and honour. Any attempt to violate the honour and dignity of the child shall be sanctioned according to the law.
- 4.4 **The Education Code at art. 3** provides that inclusive education is an education process which responds to the diversity and individual needs of children and offers equal chances and opportunities of exercise of their fundamental human rights and freedoms and quality education in general education settings; **art. 7** education is established on the following fundamental principles: **let. b)** the quality principle – based on which educational activities shall align with the national standards of reference and best national and international practice; **let. h)** the principle of ensuring equality; **art. 135 par. (1) let. i)** didactic and scientific-didactic personnel, persons in scientific and leadership positions have the duty to prohibit any discrimination.
- 4.5 **The International Convention on the rights of the child at art. 2 par. 1** States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status; **art. 29 par. 1** States Parties agree that the education of the child shall be directed to: **let. a)** The development of the child's personality, talents and mental and physical abilities to their fullest potential.

V. In conclusion, the Council retains for review the following

- 5.1 Based on the case files, the Council has established that it must pronounce itself whether a discriminatory act existed against the child during the education process.
- 5.2 The Council reiterates that both the national legislation (art. 15 par. 1 and art. 19 of the Law No. 121 on ensuring equality), and the jurisprudence of the European Court of Human Rights (amongst many other cases, see the case of D. H. and others vs. Czech Republic par. 82-84, par.177, case of Chassagnou and others vs. France par. 91-92, Timishev vs. Russia par.57) envisages the special rule on reversal of the burden of proof in anti-discrimination cases, and namely: once the applicant has shown that there has been a difference in treatment, it is then for the Respondent to show that the difference in treatment could be justified. Based on the allegations from the petition, in order to establish a presumption of direct discrimination by association, the Petitioners had to present evidence of acts which shall comprise cumulatively the following elements:
 - a) less favourable treatment of the child (exclusion, differentiation, etc.) in the exercise of a right
 - b) applied comparatively to other children
 - c) in an analogous or comparable situation with the Petitioners
 - d) against a protected characteristic.
- 5.3 After the analysis of the allegations set forth by the Petitioners, the Council notes that the presumption of discriminatory treatment has been established. The Council has established that the Petitioners' son was excluded from the activities organised on YYYYYY at the kindergarten he attends, while other children were involved in these activities. The Council took notice of the fact that the son of the Petitioners was excluded, due to his shyness, and reserved character and incoherent speech. The Council retains that the alleged traits pertain to the personal traits of the child and accepts that these cannot serve as a reasonable ground for exclusion of the child from the aforementioned activities.
- 5.4 In compliance with the art. 15 par.(1) of the Law on ensuring equality No. 121 from 25.05.2012, the burden of proof for substantiating that the treatment was not discriminatory shall be attributed to the person who is alleged to have committed a discriminatory act. The Council will examine if a reasonable and justified explanation of the alleged discriminatory act exists.
- 5.5 The Council took notice of the Respondent's position, who noted that for the participation at the event from YYYYYY, 32 children had been selected, those who displayed distinct abilities and capacity to perform in a competition, and highlighted that the purpose of the event was to present the institution at the highest level possible. During the hearing, the Council has established that four children from the kindergarten have not been involved in any activity during that day, amongst whom also the Petitioners' son.
- 5.6 The Council, albeit accepting that, in general when organising a competition it is a reasonable and objective criteria to select children whose abilities comply with the requirement of the competition, it notes that such an argument would be valid only if the children are promoted based on their merits, however not for the goal to present the institution at the highest level possible. In other words, the Council underlines that it is unacceptable to exclude the children from participation at activities, while following the goal to show how performant the institution is. Also, the Council notes that the purpose of the preschool institution is to develop the child's personality, based on his/her individual rhythm and needs, which must provide a good start in his/her life. Preschool education should be oriented towards **ensuring a differentiated (individualized) incentivising** of the children, with the core accent on the socio-emotional, cognitive development, the development of language and communication, development of the learning capacities and abilities of the children. Failure to involve children into activities which will lead to development of such abilities and capacities may be equalled to the undermining of their equal chances and opportunities in benefitting of the annual education.
- 5.7 The situation in which the didactic personnel, the managers of the education institutions, exclude or marginalise the children, who, due to certain factors, are more timid and encounter difficulty with group integration, only with the aim of displaying the performance and to strengthen the image of the institution, is unacceptable. Moreover, in the opinion of the Council a preschool institution shall have a high performance not when it accentuates

only the talents of the children, but when it shows **what abilities it has managed to develop in every child.**

- 5.8 The Council also draws attention that although the children who were not involved into this activity, were involved in alternative activities, four of these children were marginalised. This fact shows a lack of due diligence both on the part of the institution manager and of the didactic personnel regarding their duty to not allow any discriminatory acts during the educational process.

Thus, being guided by the provisions set forth in art. 1, 2, 3 and art. 9 let (1) and (b) and art. 15 par.(4) of the Law on ensuring equality No. 121 from 25.05.2012, in conjunction with par. 61 of the Law on the activity of the Council on the prevention and elimination of discrimination and ensuring equality No. 298 from 21.12.2012,

THE COUNCIL DECIDES:

1. The alleged acts constitute discrimination on the grounds of supposed disability (the alleged deficiency for inclusion) within the educational process.
2. The chairwoman of the (.....) shall apologize and will inform the didactic personnel of this institution about these decisions and will take measures for dissemination of information and education and enhancing of the capacity of the institution's personnel in the area of inclusive education.
3. The Council recommends the Ministry of Education, Culture and Research to ensure the training of the preschool didactic personnel is in compliance with the findings from this decision and promoting of best practices for the inclusion of the children with special educational needs or of children that supposedly encounter problems with integration into a group.
4. The decision shall be sent to the Ministry of Education, Culture and Research for dissemination to all the managers of preschool institutions in order to prevent any similar cases in the future.
5. The chairwoman of the preschool institution (.....) shall inform the Council within a term of 30 days from the moment of receipt of this decision, about the measures taken or planned for the implementation of the recommendations set forth in this decision.
6. The decision is communicated to the parties and is publicly accessible on the webpage www.egalitate.md.
7. The decision may be appealed in an administrative court, in compliance with the provisions of par. 65 of the Law No. 298 from 21.12.2012 on the functioning of the Council on the prevention and elimination of discrimination and ensuring equality and the Law on administrative courts No. 793 from 10.02.2000.

Members of the Council that voted this decision:

Svetlana DOLTU – member

Andrei BRIGHIDIN – member

Victorina LUCA – member

Evghenii Alexandrovici GOLOȘCEAPOV - member