



**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 6 November 2017  
case No. 107/17**

Members of the Council present at the deliberative hearing:

Ian FELDMAN – chairman  
Oxana GUMENNAIA – member  
Andrei BRIGHIDIN – member  
Lucia GAVRILIȚĂ – member

**having examined**, in a public hearing, written and oral submissions of the  
**Petitioners:** T.C.

**Respondent:** Journal FM, and

**deliberated in a closed hearing, regarding the following**

**I. Subject matter of petition**

Discriminatory conduct based on ethnic origin.

**II. Admissibility of petition**

The petition is filed in compliance with the art. 13 of the Law on ensuring equality No. 121 from 25.05.2012. The Petitioner has alleged the exception to inadmissibility from par. 42 let. d) of the Law No. 298 from 21.12.2012 on the activity of the Council. The Council notes that the exception to admissibility concerns the substance of the case, hence it will be examined during the final conclusions on the case.

**III. Submissions by Parties**  
***Petitioner's submissions***

- 3.1. The Petitioner alleges that the TV show „Popcorn Show”, broadcasted by the radio station Journal FM, contained two messages of incitement to discrimination based on national origin. One of the anchors commented both messages, displaying a different attitude towards the envisaged nationalities (Moldovan and Jews). Thus, in a message posted to the respondent's Facebook page, posted by O.B, *"Foaie verde 10 lei,<sup>1</sup> some Moldovans are good-for-nothings<sup>2</sup>"* the radio presenter replied *"Just some?"*, and in the message posted by the M.V. *"Foaie verde 10 lei, Moldova is full of Jews, if you want to be like them, lend 10 lei "*, the same presenter commented *"do not be mean towards other nations, it is not good. This is the cause which generates all world conflicts"*. The petitioner alleged that the presenter displayed discriminatory treatment of Moldovans in comparison to Jews.
- 3.2. The Petitioner requested that Council recognises the admissibility of Petition, issues a decision to confirm that discrimination based on national origin has occurred, and issues a recommendation to the radio station Journal FM shall admit it committed acts of discrimination during a live edition of „Popcorn Show”.

<sup>1</sup> Note of translator: a rhyme from folklore without special meaning, literally meaning „green leaf and 10 lei”, where „lei” is the plural of the national Moldovan currency „leu”.

<sup>2</sup> **DERBEDÉU**, *derbedei*, plural. A man with no meaning in life, good for nothing, sluggard, vagabond, loafer.

source: Explanatory Dictionary of the Romanian language.

author: Romanian Academy, Institute of Linguistics "Iorgu Iordan".

### **Respondent's submissions**

- 3.3. The Respondent affirmed that the allegations of the petitioner have no connection whatsoever to the editorial policy and do not express the official position of the radio station or the presenters of the radio show. He declares that the petition refers to the content of some messages from the listeners of the radio program, which reflect their own opinions regarding the personal qualities of persons (Moldovans). All these messages are of a humorous nature, in a form of pamphlet and are judged by the ingenuity of their style mainly. The Respondent notes that the Petitioner, as a consumer of radio programs, should take into account the theme of this radio show, which is not meant to be an analytical, political or debate program.
- 3.4. The radio station and the presenter against whom the allegations are made requested dismissal of complaint as lacking grounds.

### **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 the race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin; **art. 32 par. (2) art. 32 par. (1)** stipulates that Every citizen shall be guaranteed the freedom of thought and opinion, as well as the freedom of expression in public by way of word, image or any other means possible; **par. (3)** The law shall forbid and prosecute all actions aimed at denying and slandering of the State and people, incitement to national hatred, incitement to discrimination.
- 4.2. **Law on ensuring equality No. 121 from 25.05.2012 in 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 the 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 and direct discrimination as unfavourable treatment of a person based on any of the prohibited criteria in the situation comparable to another person; **art. 3** envisages that subject to discrimination may be both natural persons and legal entities from the public or private spheres.
- 4.3. **Law on the freedom of expression No. 64 from 23.04.2010 at art. 2** defines hate speech as inciting to hatred in any form of expression which provokes, propagates, promotes and justifies racial hatred, xenophobia, anti-Semitism or any other forms of hatred based on intolerance; **art. (3)** The exercise of freedom of expression may be subject to restriction by law, necessary in a democratic society to protect the health and morals, reputation or rights of others; **art. 7 par. (1)** Everyone has the right to protection of honour, dignity and professional reputation from damage caused by spreading of false reports about the facts, value judgments without sufficient factual basis or from slander.
- 4.4. **Law on protection of children from the negative impact of information No. 30 from 07.03.2013, art. 3 par. (1) let. i)** stipulates that information with negative impact on children is public information which encourage the degrading treatment of the human dignity; **let. j)** which reveal contempt or humiliation of a person or group of persons based on ethnic or national origin, race, sex or disability, social status, language, religion, conviction and opinion.
- 4.5. **The Audiovisual Code art. 6 par. (1)** radio broadcasting enterprises shall be prohibited to broadcast programs containing any form of incitement to hatred based on race, religion, nationality, sex.
- 4.6. **The Decision of the Coordinating Council for the Audiovisual Activity of radio broadcasting enterprises No. 127 from 26.12.2007 art. 13** the radio broadcasters shall be prohibited to discriminate anyone based on race, ethnic origin, religion, sex, age, sexual orientation or disability and shall abstain from incitement to hatred and violence when imparting information or expressing opinions.
- 4.7. **The Decision of the Coordinating Council for the Audiovisual Activity No. 99 from 19.07.2012 art. 4** during broadcasting of audiovisual programs any less favourable or discriminatory treatment based on national or ethnic origin shall be prohibited.

- 4.8. **The European Convention of Human Rights at art. 10** provides that everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary; **art. 14** provides that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
- 4.9. **The International Covenant on Civil and Political Rights at art. 19 par. (1)** Everyone shall have the right to hold opinions without interference; **par. (2)** Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice; **par. (3)** The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals; **art. 20 par. (2)** Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law; **art. 26** All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

## V. In conclusion, the Council retains the following

- 5.1. Initially, the Council will pronounce itself first of all on the exception of admissibility and then on the substance of the case.
- 5.2. The Council has examined the arguments presented by Respondent, namely that the circumstances of these case do not include discrimination in the meaning of the art. 2 of the Law on ensuring equality no. 121 from 25.05.2012. The Council rejects this argument and notes that, in the audio transcriptions annexed, one notes that the presenters of the radio transmission comment and impart their opinions regarding the discriminatory messages posted by the listeners of the radio station.
- 5.3. The Council has examined the merits of Petition, and considers that the afore-mentioned argument has no connection with the any of the grounds stipulated in par. 42 of the Law on the activity of the Council for prevention and elimination of the discrimination and ensuring equality No. 298 from 21.12.2012.
- 5.4. From the materials of the case, the Council retains for review the allegation of discriminatory treatment on the grounds of national and ethnic origin.
- 5.5. The Council notes that even the broad definition of discrimination contains the phrase „*support for the discriminatory conduct*”. This phrase reveals the intention of the legislator to include into this definition rather a broad and not a restricted spectrum of conduct, which may allow, in practice, the use of various characteristics and which may include in each case a range of attitudes expressed through words, gestures, acts or discriminatory acts.
- 5.6. The Council, after having examined the alleged facts, established presence of the discriminatory conduct, discernible in the actions of the moderator of the program „Popcorn Show”. This treatment is expressed through toleration of the discriminatory messages regarding the Moldovans, whereas at the same time rejecting the discriminatory messages against the Jews, thus suggesting that one group is entitled to higher protection than the other.
- 5.7. The Council notes that both the message regarding the Jews and the one regarding Moldovans, contains the protected characteristics of a discriminatory message, because it was

targeted at specific groups of persons (Moldovans and Jews) on the ground of protected characteristic (ethnic origin) and stigmatized the victims (Jews and Moldovans) by attribution of a series of features generally seen as undesirable (good-for-nothings), thus projecting the targeted group outside of the normal social relationships. Due to these considerations, the presenter had to react similarly to both messages, thus curbing the support for the discriminatory remarks in mass media. However, judging by the lack of such reaction towards the remarks against Moldovans, he showed that an offence to this ethnicity is tolerated.

- 5.8. The Council highlights that the freedom of expression is not an absolute right, it implies that certain restrictions may be placed on it, due to the need to protect the fundamental values, such as the right to protection of reputation, dignity and honour of the person. The international standards (see these enlisted at par. 4.8, 4.9) encourage the states to take action in cases expressly provided for in the law, if certain imparted information while seemingly complying with freedom of expression, in fact violate the morals, reputation and the rights of others. The Council mentions that the national legislation provides, in art. 32 from the Constitution of the Republic of Moldova, that freedom of expression shall not interfere with the honour and dignity of another person. At the same time, it does prohibit slandering of a people, incitement to hatred on the ground of national origin and incitement to discrimination. In the same line of thought, the Council reminds about the Decisions of the Coordinating Council of the Audiovisual activity (as noted at par. 4.6, 4.7 of this decision) by which the radio broadcasting enterprises have been informed about their obligation to avoid discrimination of persons based on their ethnic origin and to abstain from any less favourable or discriminatory remarks on the grounds of national or ethnic origin.
- 5.9. Taking into account the afore-mentioned arguments, the Council highlights that the diversity and free imparting of ideas, and also pluralism, are important features of democratic societies, however exercise of these freedoms may not result in interference with the human dignity and/or rights of others. Hence, as mentioned previously, the exercise of the freedom of expression carries with it duties and responsibilities. The radio presenters, in their role of persons who may shape public opinion, shall be aware of the negative effects of the discriminatory messages and shall exert maximum due diligence in posting comments regarding certain broadcasted debates. At the same time, the Respondent Journal FM should make sure that its presenters are not using the broadcasting program as a tool for using discriminatory remarks oriented towards offending one group or another.

Thus, being guided by the art. 1, 2, 3 and art.15 par. (4), of the Law No. 121 on ensuring equality, and the par. 61 of the Law No. 298 from 21.12.2012 on functioning of the Council for the Prevention and Elimination of discrimination and ensuring equality,

#### THE COUNCIL DECIDES

1. Alleged facts constitute discrimination.
2. Journal FM shall apologize in public during the program "Popcorn Show", by using the following text: *"The Journal FM apologizes for discriminatory remarks on the ground of ethnic origin, made on the date of 7 September 2017"*, by making referral to the date and hour of the program during which discriminatory message has been imparted.
3. The respondent shall inform its employees the text of this decisions and will perform training for the its staff for avoiding similar situations in the future.
4. This decision shall be communicated to the Parties and made public at [www.egalitate.md](http://www.egalitate.md).
5. The decision may be appealed in an administrative court, in compliance with the provisions of the par. 65 of the Law No. 298 from 21.12.2012 on functioning of the Council on preventing and elimination of discrimination and ensuing equality and the Law on administrative courts No. 793 from 10.02.2000.

Members of the Council who voted the decision:

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Ian FELDMAN – chairman

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Oxana GUMENNAIA – member

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Andrei BRIGHIDIN – member

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Lucia GAVRILIȚĂ – member