



## 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

Adresa: Republica Moldova, Chișinău, MD-2004  
bd. Ștefan cel Mare și Sfânt nr.180, bir. 405  
tel.: +373 (0) 22 21-28-17

Адрес: Республика Молдова, Кишинёв, MD-2004  
бул. Штефан чел Маре, 180, каб. 405  
тел.: +373 (0) 22 21-28-17

### DECISION from 19 October 2018 case No. 111/18

Members of the Council present at the deliberative hearing:

Ian FELDMAN – chairman  
Svetlana DOLTU – member  
Andrei BRIGHIDIN – member  
Evghenii Alexandrovici GOLOȘCEAPOV – member

**have examined**, in a public hearing, written submissions of the  
**petitioner:** Platform for Gender Equality  
**respondent:** Ilan Șor, politician, mayor of the town of Orhei and  
**have deliberated in a public hearing**, regarding the following

#### I. Subject matter of the Petition

Incitement to discrimination of women in politics.

#### 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 of 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

##### **Petitioner's submissions**

- 3.1 The petitioner notes that on 23 May 2018, the mayor of Orhei, Ilan Șor, published on a social network a message addressed to a political opponent, as follows „*You were never able to even organize your private life, you have no one to care for, you care for nobody. Without making at least one person happy, how do you think to make an entire people happy?*”.
- 3.2 The petitioner alleges that this statement of the Respondent is sexist and discriminatory against women from the political sphere and in general, against women of the Republic of Moldova. In line with these statements, women who do not have in their care any family members, have no place in public life and cannot exercise political activity. The petitioner claims that it is merely a detail of a legitimate public interest regarding the biography of the public persons, but not a trait which defines the whole character of a personality and his/her professional capacities.
- 3.3 The petitioner affirms that in similar situation are several men politicians without children, and namely (XX, YY, ZZ).
- 3.4 Therefore, this message focused on the distinct biographical details has as its aim the marginalisation and discrimination of women-politicians and to exert on the, additional social pressure. These statements contribute to propagation of stereotypes, and namely that women are not competent or competitive enough for getting involved in the decision making process. Moreover, such an attitude displayed by the mayor of Orhei could lead to discouragement of the women to get actively involved in the political life, out of fear not to fit a standard which does not have an alternative option, without being subjected to public humiliation and opprobrium. By his actions, the Respondent has infringed the provisions of

art. 38 of the Constitution of the Republic Moldova, art. 7 of the Law for ensuring equal opportunities for men and women, art. 4 of the Law on ensuring equality, art. 176 of the Criminal Code.

***Respondent's submissions***

- 3.5. The Respondent notes that he does not deny the right of the petitioner to file a petition with the Council regarding an alleged discriminatory treatment, however he draws attention to the fact that the petition on behalf of the politician, XXX has been filed without the consent of the latter. At the same time, he affirmed that albeit the petitioner filed a petition on behalf of XXX, the petitioner has enlarged the circle of potential victims without any justification, by describing his behaviour as an alleged discrimination against all women.
- 3.6. With regard to the alleged violation of the provisions set forth in the art. 38 of the Constitution of the Republic of Moldova the respondent notes that he did not exert pressure of XXX to give up her political life and neither did he influence her with the aim to make her step down from running for the subsequent political elections.
- 3.7. The Respondent denies that he has infringed the provisions of the article 7 of the Law for ensuring equal opportunities to women and men, since in his position as a political party, he does comply with the law. When establishing the statutes for the Political Party Șor, he insisted that the text of this document contained the principle of promoting women in the political sphere. Namely, in Chapter II art. 3 par. (6) it is stipulated that the party advocates for the creation of equal opportunities for both genders, by promoting a representation of women quota in the leadership positions of at least 40%, and also inclusion into the lists of candidates for election positions. These provisions have been successfully implemented in the activity of the party. The deputy chairperson of the Party is a woman. Presently, the party has 20.000 members of whom over 50% are women. Moreover, the Respondent has declared that he has personally insisted for a woman to run as candidate for the position of the President of the Republic of Moldova for the 2016 elections on behalf of the Ravnopravie party, namely XXX. Also, he promoted by his own initiative to the position of the mayor at the local elections of Chisinau municipality another woman, XXX.
- 3.8. In another line of argument, the Respondent denies also the accusations regarding violation of the provisions set forth in the art. 4 let. a) of the Law on ensuring equality. The Respondent notes that the message posted on his personal page from the social network was expressed in his role of a politician, chairman of the Political Party Șor and not in his capacity as a mayor.
- 3.9. In terms of an alleged infringement by him of the provisions of art. 176 of the Criminal Code, the Respondent notes that his actions fall within the ambit of the freedom of expression, a right guaranteed by the Constitution of the Republic of Moldova, and by the European Convention of Human Rights and, accordingly, do not contain the elements of an offence of infringement of the equality of the rights of citizens.
- 3.10. Therefore, the posted message has been directed against a specific person, without aiming at XXX as a woman, but in her quality as a politician and not against all women. Moreover, this message was meant as a reply to XXX who floods his personal reputation with lies, contestations and serious accusations aimed at discrediting him. In this regard, the Respondent has filed several complaints with the competent authorities for investigation of the legality of XXX's actions.

#### 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; **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. (2)** the freedom of expression may not harm the honour, dignity or the rights of other people to have and express their own opinions or judgments.
- 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 the incitement to discrimination as any behaviour by a person designed to apply pressure on or which reveals a deliberate action aimed at discrimination of another person, based on the criteria stipulated in this law; **art. 3** envisages that subject to discrimination may be natural persons and legal entities from private and public spheres; **art. 4** forms of severe discrimination: let. a) promotion or practicing of discrimination by public authorities; let. c) dissemination of discriminatory messages and symbols in public places; let. g) discrimination perpetrated against a group of persons.
- 4.3. **Law on ensuring the equality of opportunities for women and men No. 5 from 09.02.2006 at art. 2** stipulates that equality between women and men shall mean equality in rights, equal opportunities in exercising one's rights, equal participation in all spheres of life, equal treatment of women and men; sexist language shall mean use of expressions and addresses which present women in a humiliating, degrading or violent manner, by attacking their dignity; equality between women and men is equality in rights, equal opportunities in exercising one's rights, equal participation and responsibilities in all spheres of life; discrimination on the criterion of sex – any differentiation, exception, limitation or preference aimed towards or having as effect the limitation or intimidation of equality of recognition, exercise and implementation of human rights and fundamental freedoms of women and men; **art. 7 par. (2)** Parties and other socio-political organizations must contribute to ensuring equal rights and opportunities between their members, women and men, respecting the gender representation to a minimum of 40% of each sex, by means of: a) ensuring representation of women and men in the composition of their management bodies; b) ensuring representation in the lists of candidates of women and men, without discrimination on the criterion of sex.
- 4.4. **Law on freedom of expression No. 64 from 23.04.2010 at art. 3 par. (1)** stipulates that any person has the right to freedom of expression. This right includes the freedom to seek, receive or impart information and ideas; **par. (2)** Freedom of expression protects both the form and content of imparted information, including information that offends, shocks or disturbs; **par. (3)** The exercise of freedom of expression may be subject to restriction by law, necessary in a democratic society for the national security, territorial integrity or public safety, to protect order and prevent crime, to protect the health and morals, reputation or rights of others, for preventing the disclosure of confidential information or for maintaining the authority and impartiality of the judiciary.
- 4.5. **Law No. 199 from 16.07.2010 on the legal status of civil servants performing responsible public duties at art. 4** stipulates that activity as a dignified civil servant shall be exercised based on the principles of legality, free consent, transparency, personal example, responsibility and loyalty.
- 4.6. **Convention on Elimination of All Forms of Discrimination against Women at art. 1** provides that, for the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of gender which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field; **art. 2** States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating

discrimination against women and, to this end, undertake: **let. (b)** To adopt appropriate legislative and other measures, including sanctions

- 4.7.** where appropriate, prohibiting all discrimination against women; **(c)** To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; **(d)** To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; **(e)** To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.
- 4.8. General Recommendation No. 28 on the core obligations of the States parties under article 2 of the Convention on Elimination of All Forms of Discrimination against Women at par. 22** stipulates that inherent to the principle of equality between men and women, or gender equality, is the concept that all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices. States parties are called upon to use exclusively the concepts of equality of women and men or gender equality, by fair treatment of men and women, based on their respective needs; **par. 36** establishes an obligation of States parties to eliminate discrimination by any public or private actor. The types of measures that might be considered appropriate in this respect are not limited to constitutional or legislative measures. States parties should also adopt measures that ensure the practical realization of the elimination of discrimination against women and women's equality with men. This includes measures that: ensure that women are able to make complaints about violations of their rights under the Convention and have access to effective remedies; enable women to be actively involved in the formulation and implementation of measures; ensure Government accountability domestically; promote education and support for the goals of the Convention throughout the education system and in the community; encourage the work of human rights and women's non-governmental organizations; establish the necessary national human rights institutions or other machineries; and provide adequate administrative and financial support to ensure that the measures adopted make a real difference in women's lives in practice. The obligations incumbent upon States parties that require them to establish legal protection of the rights of women on an equal basis with men, ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination and take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.
- 4.9. The UN Convention on the Elimination of All Forms of Discrimination against Women at art. 2 let. f)** provides that States shall take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.
- 4.10. Concluding Observations of the UN Committee on the Elimination of Discrimination against Women (UN CEDAW),** adopted on 18.10.2013 after examining the combined fourth and fifth periodic reports, at par. 17-18, contain the recommendation for the Republic of Moldova to develop a comprehensive strategy across all sectors, targeted at women and men, girls and boys, to overcome patriarchal and gender-based stereotypical attitudes concerning the roles and responsibilities of women and men in the family and in society.
- 4.11. The European Convention on Protection of Human Rights and Fundamental freedoms envisages in art. 10** stipulates 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** 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.

**4.12. *The jurisprudence of the European Court of Human Rights, the case of Incal v. Turkey from 09.06.1998***, in which the ECtHR noted that the freedom of political debate is undoubtedly not absolute in nature and that States may make it subject to certain restrictions or penalties, but it is for the Court to give a final ruling on the compatibility of such measures with the freedom of expression enshrined in the Convention. The status and role of the politicians as public actors is viewed by the Court as an important factor, in cases when politicians with a higher degree of visibility incite to discrimination.

**4.13. *The jurisprudence of the European Court of Human Rights, in the case of Erbakan v. Turkey No. 59405/00 from 06.10.2006***, in which the Respondent complained about the fact that the law enforcement bodies condemned him to one year of jail term for incitement to hatred during an electoral campaign. The ECtHR found a violation of art. 10 (freedom of expression) and noted that combating all forms of intolerance and hate speech constitutes an inherent part of the protection of human rights and it is extremely important that politicians avoid making comments in their public debates which might be considered as favouring intolerance.

## **V. In conclusion the Council retains for review the following**

5.1. From the case files the Council has established that it must pronounce itself on existence of the act of incitement to discrimination of women in political life.

5.2. The Council has examined the submissions of the Respondent regarding the admissibility of the complaint. The Respondent considers that the petition must be rejected because the consent of the alleged victim of discrimination, namely XXX, is absent. At the hearing of the Council, the petitioners, members of the Platform for Gender Equality, mentioned that they filed a petition as interested third parties and requested for examining of the statements of the Respondent based on alleged incitement to discrimination against women in political life. The Council notes that in conformity with provisions of art. 13, par. (1) of the Law No. 121 from 25.05.2012 on ensuring equality, the confirmation of existence or lack thereof of a discriminatory act shall be initiated by the Council *ex officio* or upon the request of interested third parties and on the request of syndicates or non-governmental organizations, which promote and protect human rights. Thus, the Council found that the **petition is admissible**, being filed by interested third parties. As a result, the Council shall proceed to examine if, generally, the statements brought to its attention can be framed as incitement to discrimination of women in political life.

5.3. Thus, 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. Thus, based on existing allegations, in order to confirm the presumption of incitement, the presented arguments shall comprise substantiation of the following constituting elements:

- a) existence of a conduct, by which a person exerts pressure or displays an intention,
- b) aimed at discrimination of a third party (*this implies that the conduct is an incitement to exclusion, restriction, preferential treatment or differentiation between the rights and freedoms of a person or a group of persons*)
- c) Based on a protected characteristic set forth in the law.

5.4. After examining the circumstances of this case, the Council notes that the presumption of incitement to discrimination has been established. The Council retains for review the statements of the Respondent, namely that a woman or women who did not succeed to take care of their private life, cannot make a nation happy, do exhibit a conduct, which constitute an incitement to the exclusion of women from political life. The Council took notice of the fact that these remarks were addressed to a woman politician, hence it shall retain for

review that similar statements may be perceived as an incitement to exclusion of unmarried or childless women from political life.

- 5.5. In compliance with art. 15 par. (1) of the Law on ensuring equality No. 121 from 25.05.2012, the burden of proof in substantiating that acts were not discriminatory shall be transferred to the person, against which the allegation of perpetrating a discriminatory act exists. The Council proceeds further to establish whether an objective and reasonable justification of the discriminatory treatment exists.
- 5.6. The Council has examined the submissions of the Respondent, who claimed that his conduct falls within the ambit of freedom of expression and mentioned that these statements were launched in his capacity as a politician and not as mayor of the city. Also, the Respondent clarified that his message was aimed against one specific person, regarding her capacity as a political representative, and not against all women, stressing that he supports active involvement of women in political life.
- 5.7. The Council notes that the freedom of expression of political speeches is not absolute in its nature, in cases when a politician incites to discrimination, this right may be restricted and even sanctioned. The politicians as public personalities, due to their capacity to exercise influence over a wide audience, must exercise a higher degree of responsibility and have caution in expressing public opinions. The Council notes that the boundaries of freedom of expression are more constricted for politicians and public persons, when compared to other members of society.<sup>1</sup> In contrast to the latter, politicians must accept, as inevitable and deliberate, that there is strict observance of all their words and all their actions by journalists, and also by the public and as a result, be more responsible.<sup>2</sup>
- 5.8. The Council rejects the argument of the Respondent that these statements were directed against a specific person, a woman politician, and does not concern all women. The Council stresses that the impact of the statement has a discouraging effect on the involvement and promotion of women to take part in political life.
- 5.9. The Council retains for review that any public speech or materials, that present the image of women or men in a manner which humiliates their dignity, are inadmissible. The Council notes that the Respondent by his statements revealed a sexist attitude towards women in political life, and made use of prejudice, that it is unbecoming for a woman who did not arrange her private life to be involved in political life. Such statements incite the public to regard women politicians only through the lens of their family and civil status, and thus diminish the importance of objective factors which are of substance in evaluating a politician, including their intellect, achievements in political area, their potential as leaders and their vision for development.
- 5.10. The Council underlines the fact that the sexist statements which incite to discrimination against women cannot be justified by the fact that the Respondent promotes and encourages the active participation of women in political life within his political party. His statement has an impact and is of an alarming nature, including for the women from the political party which he leads, because if a woman politician from his party cannot arrange her private life, she would be regarded sceptically because she too "*will not be able to make a people happy*".

Thus, being guided by the provisions set forth in the art. 1, 2, 3 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

---

<sup>1</sup> See the case *Erbakan v. Turkey*, ECHR.

<sup>2</sup> See cases *CtDO Leroy v. France* from 2 October 2008; *Feret v. Belgium* from 16 July 2009; *Vona v. Hungary* from 9 July 2013.

1. The alleged facts constitute discrimination against women in political life.
2. The Council recommends that the Respondent apologizes publicly for sexist statements and incitement to discrimination, by using the following text: *"I apologize for my sexist statements and incitement to discrimination of women in political life"*.
3. The Council recommends that the Respondent shows a higher degree of responsibility in expressing his public opinion and also to abstain from subsequent sexist statements and incitement to discrimination.
4. The Respondent shall inform the Council for the prevention and elimination of discrimination within 10 days from receipt of this decision, about the measures taken and planned for enforcement of the recommendations from this decision.
5. The decision is communicated to the parties and is publicly accessible on the webpage [www.egalitate.md](http://www.egalitate.md).
6. The decision may be appealed in an administrative court, in compliance with the provisions of par. 65 of 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 who voted the decision

---

Ian FELDMAN – chairman

---

Svetlana DOLTU – member

---

Andrei BRIGHIDIN – member

---

Evghenii Alexandrovici GOLOȘCEAPOV – member