



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 of 24 October 2018 case No. 93/18

Members of the Council present at the deliberative hearing:

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

having examined, during public hearing, written and oral submissions of the
Petitioner: Alexandr Roșco, prime-deputy chairman of the Political Party Casa Noastră
Moldova (Our Home Moldova)

Respondents: „EXIMBANK - Gruppo Veneto Banca” and „Mobiasbank – Groupe
Societe Generale”.

Interested third party: Central Electoral Commission (CEC)
deliberated in a closed hearing, regarding the following.

I. Subject matter of the Petition

Alleged discrimination in access to banking services based on political affiliation.

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 par. 42 of the Law on the activity of the Council for the 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 at the initiation of an electoral campaign each participating political party must open a bank account „Electoral fund”, and use it for all financial expenditures during the electoral campaign. After the registration at the Territorial Electoral Council of Chisinau, the contestant of the political party Casa Noastră Moldova, Mr. Alexandr Roșco, requested for the bank „EXIMBANK - Gruppo Veneto Banca” to open an account entitled “Electoral fund”. The request was filed on 17.04.2018 and rejected on the same day by the bank. It was motivated by the lack of the signature of the person empowered by the Statutes to sign the documents, and orally it was explained that besides the signature of the Chairperson of the party, the latter had to come in person when presenting the documents, otherwise the banking account „Electoral fund” could not be opened. The Petitioner claims that on 04.05.2018 the „EXIMBANK - Gruppo Veneto Banca” opened a banking account „Electoral fund” for the electoral contestant of the Party of National Unity, within a reasonable term and without any impediments.

3.2 The Petitioner mentioned that on 26.04.2018, the same request was filed with the bank „Mobiasbancă – Groupe Societe Generale”. However, the bank after receiving this request, did not open the requested bank account for a period of over two weeks, without providing any written explanations regarding this. The bank representative communicated orally that they must perform an analysis of the activity of the party and of the persons in its leadership, and only after this they shall take a decision.

Submissions by „EXIMBANK - Gruppo Veneto Banca”

3.3 On 17.04.2018 the bank received the request for opening a bank account from the political party Casa Noastră Moldova. After examining it, the bank noticed it was not signed by the responsible person of the political party based on the Statutes. Thus, due to the fact that the request had been signed by the prime-vice chairman of the party, who did not have such powers based on the legal Statutes, the opening of the bank account could not be performed. The request had to bear the signature of the chairman of the party or another person vested legally with powers to sign documents, with presentation of the necessary documents. The Respondent confirmed that the bank opened a bank account „Electoral fund” for the political party of National Unity. This account was opened based on the legal provisions in force, and the request for opening an account was signed by the executive chairman of the party, namely the person having signatory authority.

Submissions by „Mobiasbancă – Groupe Societe Generale”

3.4 On the date of 27.04.2018 the political party Casa Noastră Moldova filed a request with the bank for opening a bank account entitled „Electoral fund”. On 16.05.2018, the bank sent a letter to the applicant by which the bank informed that it does not any longer provide services of opening banking accounts in the category „Electoral fund”. During the local electoral campaign from 2018, the bank did not open any bank accounts of the „Electoral fund” type, although several requests for this were filed. Regarding the delay in offering an answer, it noted that the decision of the bank to not provide the service of opening banking accounts of the type „Electoral fund” in general had still to be made formal internally. Only after this the territorial branch of the bank provided the applicant with an answer.

Submissions by the Central Electoral Commission (CEC)

3.5 CEC notes that during the period of the local elections from 2018, CEC received a complaint on 17 April 2018 from the electoral contestant of the political party Casa Noastră Moldova regarding the refusal by Eximbank-Gruppo Veneto Bancă to open a bank account entitled „Electoral Fund”. In this regard, the CEC requested on 20 April 2018 that the Eximbank-Gruppo Veneto Bancă (Bank) explains shortly the reasons for refusing to open a bank account under the category „Electoral fund”. On 26 April 2018 the Eximbank-Gruppo Veneto Bank sent a note to the Commission that the opening of the bank account in the category „Electoral fund” was not possible, because the request for opening a bank account had been signed by the prime-vice chairman of the political party, who based on the legal statutes did not have the signatory authority for such requests. At the same time CEC drew the attention of the electoral contestant that there is an obligation to submit the required documents for opening a banking account by respecting all the conditions set forth by the bank. By the same letter, the Committee informed the electoral contestant of the possibility of accessing another bank.

3.6 On 4 May 2018, CEC received another letter by which the electoral contestant informed it about the failure to open a bank account under the category „Electoral fund” also at the „Mobiasbancă – Groupe Societe Generale”. On 06 May 2018 CEC sent a request to the „Mobiasbancă – Groupe Societe Generale” for it to provide information on the procedure for examining the requests of the electoral contestant. On 14 May 2018, the bank, by referring to the provisions of art. 5 of the Law on prevention and combating of money laundering and financing of terrorism, mentioned that in cases when the bank cannot comply with the due diligence measures towards customers set forth in the Law, the bank has the obligation to not conclude any business contract with such customers.

During the examining of the documents submitted by the political party Casa Noastră Moldova, it was established that the due diligence measures envisaged in the Law cannot be applied, including due to the lack of similarity between the signature of the chairman of the party on his identification document with the signature of the powers of attorney presented by Mr. Alexandr Roşco. On 16 May 2018, CEC communicated to Mr. Alexandr Roşco the position of the bank, and at the same time mentioned that the Committee lacks the jurisdiction for interference into internal procedures and activities of the banking institutions, whereas the electoral contestants have the obligation to comply with the requirements set forth by the bank.

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.
- 5.1 **The 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 and direct discrimination as unfavourable treatment of a person based on any of the prohibited criteria in a situation comparable to another person; **art. 3** envisages that subject to discrimination may be both natural persons and legal entities from public or private spheres; **art. 4** forms of severe discrimination: **lit. e)** discrimination perpetrated by two or several persons; **art. 8 let. d)** banking and financial services.
- 4.2 **The Electoral Code no. 1381 from 21.11.1997 at art. 38 (2)** Direct or indirect financing and material support in any form for the electoral campaign of a contestant in an election by natural and legal entities may be used only under the following conditions: **let. a)** Electoral contestants shall open a bank account which will be specified as an "Electoral Account", to which the participants shall transfer their own money, funds granted by natural persons who are citizens of the Republic of Moldova or from legal entities on the territory of this country and shall inform the Central Electoral Commission about the person responsible for his/her financial means (the treasurer). The electoral contestants cannot be appointed treasurers; **let. b)** the bank account with the mention „Electoral fund” may be opened also prior to the registration of the electoral contestant, on condition that any financial means wired to or from this account may be performed only after the registration of the electoral contestant; **let. c)** An electoral contestant who fails to open a bank account under “Electoral Fund” shall communicate the fact to the Central Electoral Commission and may perform only activities or electoral advocacy during the electoral campaign which do not require any financial means.
- 4.3 **The Law on prevention and combating money laundering and terrorism financing No. 208 from 22.12.2017 in art. 5 par. (2)** due diligence measures towards customers include: **let. a)** identification and verification of the identity of customers on the basis of identity documents, as well as documents, data or information obtained from a credible and independent source; **let. b)** identification of the real beneficiary and application of appropriate and risk-based measures for verification of his/her identity so that the reporting entity has the certainty of knowing who is the beneficiary owner, including the application of reasonable measures, in order to understand the structure of assets and of the controlling authority of the customer; **let. c)** understanding the purpose and intended nature of business relationship and, if necessary, obtaining and assessing the information regarding them; **let. d)** on-going monitoring of business relationship, including the examination of transactions concluded during the entire duration of the concerned relationship, in order to ensure that the performed transactions are consistent with the information held by the reporting entities regarding the customer, the activity

profile and the risk profile, including the source of goods, and that the held documents, data or information are updated; **par. (3)** If it is not possible to comply with the requirements provided in par. (2) let. a)-c), the reporting entities are obliged to refuse to carry out any activity or transaction, including through a payment account, to not establish any business relationship or to terminate an existing business relationship, and to consider sending of special forms on reporting the suspicious activities or transactions to the Office for Prevention and Combating of Money Laundering in accordance with the provisions of art. 11. In this case, the reporting entities are entitled not to explain to the customer the reason of refusal.

- 4.4 Regulation on financing of electoral campaigns adopted by the Decision of the Central Electoral Committee No. 3352 from 04.05.2015 in par. 3** the definition of an electoral account means a bank account opened at a bank with the mention „Electoral fund”, with the exclusive destination for wiring of own financial means of the electoral contestant or means received from natural persons or legal entities from the territory of the country, aimed for financing of the electoral campaign of the respective electoral contestant; **par. 4** provides that for the initiation of financing of the electoral campaign, the electoral contestant shall comply with the following conditions: subpar. 1) to open a bank account at a bank with the mention „Electoral fund”, to which own financial means or means received from natural persons or legal entities from the territory of the country may be wired, with the purpose of financing the electoral campaign. The account with the mention „Electoral fund” may be opened also prior to registration of the electoral contestant, on the condition that any transfers to or from this account shall be performed only after the registration of the electoral contestant.

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

- 5.1 From the case files, the Council established that it must pronounce itself on the existence of discrimination in the access of banking services based on political affiliation.
- 5.2 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 direct discrimination, the Petitioner had to present arguments for substantiation of the following constituting elements:
- a) Less favourable treatment (exclusion, differentiation, refusal etc.) in exercise of a right set forth in the law
 - b) Applied against persons in a similar situation
 - c) Base on a protected characteristic.
- 5.3 After examining the circumstances of this case, the Council notes that the presumption of discrimination has been established. The Council retains for review that the Petitioner, and electoral contestant, requested two banks to open a bank account with the mention „Electoral fund”. The Council has established that the requests of the Petitioner were refused, hence the Petitioner could not benefit of banking services available to the public. The Council retains that the obstacles in Petitioner’s access to the banking services could be attributed to his political affiliation.
- 5.4 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.
- 5.5 The Council has examined the position of the “EXIMBANK - Gruppo Veneto Banca”, by which the bank notes that the refusal to provide to the Petitioner the bank service is not based on his political affiliation, but on the fact that the submitted documents were

incomplete. The bank “EXIMBANK - Gruppo Veneto Banca” pointed out that the request for opening a bank account had not been signed by the person empowered with signatory authority by the party’s legal Statutes. Also, based on evidence gathered in the case, the Council has established that the EXIMBANK - Gruppo Veneto Banca provided such services to other electoral contestants.

- 5.6 During the hearing, the Petitioner alleged that he corrected the shortcomings noticed by the “EXIMBANK - Gruppo Veneto Banca”, however the bank did not open the requested account. Since these statements have been made orally at the hearing, the Council requested that the Petitioner adduces evidence as to the fact that he complied with all due diligence measures and presented all required documents. The Council took notice of all the documents annexed by the Petitioner, and namely the minutes of the meetings of the permanent bureau of the political Party Casa Noastră Moldova from 10.04.2018 and from 23.04.2018, during which the Petitioner was vested with the power to open and manage the bank account “Electoral fund” and also the copy of the request for opening a bank account, signed by the chairman of the party. However, the Council notes that existence of these documents does not also prove that these were submitted to the bank. Thus, the Council notes that albeit the „EXIMBANK - Gruppo Veneto Banca” has applied a differential treatment against the Petitioner (by the refusal to open a bank account) by comparison to other persons in the same situation (other electoral contestants who received the service of opening the bank accounts), this treatment was not based on a protected characteristic (political affiliation), but was determined by other objective afore-mentioned reasons.
- 5.7 The Council established that the position presented by „Mobiasbancă – Groupe Societe Generale” S.A. during the hearing differs from the position presented to CEC.
- 5.8 The Council has examined the explanation presented to CEC by „Mobiasbancă – Groupe Societe Generale”. From its content, the Council retains for review that the bank „Mobiasbancă – Groupe Societe Generale” has noted, by making references to the provisions from art. 5 of the Law on the prevention and combating of money laundering and financing of terrorism, that in cases when it is not possible to confirm the compliance of customers with due diligence measures provided by the Law, the bank has an obligation to deny to conclude any business relationships with such clients. Also, the Council retains that during the examining of the documents presented by the political party Casa Noastră Moldova, it was noticed that the signature of the chairman of the political party from his identification document is not similar to the signature on the powers of attorney issued to Mr. Alexandr Roșco. The Council notes that due to all these well-documented circumstances of the case, the bank had the right to refuse to provide the service and it shall not be considered as discriminatory treatment in this case.
- 5.9 During the hearing, the „Mobiasbancă – Groupe Societe Generale” claimed that it did not apply differential treatment to the Petitioner, but similar treatment as for all persons in the similar situation, because the bank decided on its internal level that **the bank shall not provide this type of service (opening bank accounts with the mention “Electoral fund”)**.
- 5.10 Taking notice of all these circumstances, the Council retained for review that the bank „Mobiasbancă – Groupe Societe Generale” refused to provide a banking service normally available to all persons due to political affiliation of the person, since the opening of a bank account of the type “Electoral fund” was only requested by one electoral contestant. The Council notes that when requesting the opening of a bank account, the electoral contestant is in a similar situation compared to any person requesting that the bank provides this service. The refusal by the bank to provide this service only to electoral contestants is framed as differential treatment of the persons in a similar situation. The Council notes that the decision to deny access to this service is without any doubt based on the protected characteristic, and namely on political affiliation.
- 5.11 The Council also took notice of the provisions from art. 5 of the Law on prevention and combating of money laundering and terrorism financing, which stipulates in which conditions the reporting entities do not have the obligation to perform any transaction activity. The Council notes that in cases the beneficiary is not known, the aim and nature of banking transactions is dubious, or data are not provided by a credible and

independent source, the refusal to provide the requested service may be objective. By juxtaposing these situations to the circumstances revealed in this case, the Council notes that none of these were applicable. Since the beneficiary, that was registered at CEC in the capacity of an electoral contestant, was identifiable and the purpose of transaction was to ensure financing of the electoral campaign of the respective electoral contestant.

- 5.12 The Council could not establish presence of an objective reasoning for such refusal. The Council retains for review that each operation for wiring of financial means into the bank account of the electoral contestant shall be reported by the contestant to the CEC. Thus, the Council could not identify any obstacles or urgent risks which could justify the decision of the bank „Mobiasbancă – Groupe Societe Generale” in providing the electoral contestants with the banking service, available to general public.
- 5.13 The Council emphasizes that the political affiliation is a protected characteristic against discrimination on equal footing with other discrimination criteria, and accordingly, any differential treatment based on a protected characteristic must be curbed and avoided in the future. Toleration and admitting an arbitrary refusal to provide a publicly available service, based only on the reasoning that the bank did not want to have relationships with electoral contestants, shall result in diminishing the importance of this protected ground and could be a negative sign that if today we disregard the protection of one protected ground, tomorrow we could dismiss also other criteria.

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

1. The established acts of the bank „EXIMBANK - Gruppo Veneto Banca” do not constitute discrimination to accessing banking services based on political affiliation.
2. The alleged acts of the bank „Mobiasbancă – Groupe Societe Generale” constitute discrimination in accessing banking services based on political affiliation.
3. The bank „Mobiasbancă – Groupe Societe Generale” shall amend its internal procedures as to avoid any similar subsequent situations.
4. This decision is sent to the National Bank for introduction of a specific obligation into the regulation framework of banking institutions by the end of 2018 to open banking accounts with the mention “Electoral fund” for the electoral contestants, aimed towards avoiding similar situations in the future – so that these provisions become applicable for the electoral contestants participating in the Parliamentary elections from February 2019.
5. The bank „Mobiasbancă – Groupe Societe Generale” shall inform the Council, within a term of 10 days from the receipt of this decision, about the measures taken and planned for the enforcement of the recommendation from the decision.
6. The National Bank shall inform the Council, within a term of 30 days from the receipt of this decision, about the measures taken or planned for enforcement of the recommendations provided in this decision.
7. The decision is communicated to the parties and is publicly accessible on the webpage www.egalitate.md.
8. 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

Victorina LUCA – member

Evghenii Alexandrovici GOLOȘCEAPOV – member