



consiliul pentru egalitate  
совет по равенству  
equality council

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# SUBMISSION

of the  
Equality Council  
for the 138<sup>th</sup> session  
of the Human Rights Committee  
on the List of issues prior to reporting to be  
adopted on the Republic of Moldova

The Equality Council is a national anti-discrimination enforcement body in the Republic of Moldova with quasi-judicial powers, which started its activity on 31.07.2013 on the basis of the Law on Ensuring Equality no. 121 of 25.05.2012. The mandate of the Council generally consists in the evaluation of legislation from the perspective of standards of non-discrimination, the examination of the complaints about alleged acts of discrimination and establishment of offences with discrimination elements, the monitoring of way of implementation of laws in the field, raising of awareness and consciousness of society in view of rooting out of all forms of discrimination<sup>1</sup>.

The Submission can be published on the Human Rights Committee's website.

## **I. Non-discrimination (Art. 2 and 26)**

1. The Law on ensuring equality nr. 121/2012 was adopted in 2012 and amendments to the Law and other related legislation were adopted in February 2023:<sup>2</sup> gender identity and sexual orientation were added to the list of protected grounds, the procedure on the consideration of complains submitted to the Equality Council (the national antidiscrimination enforcement body) was improved and the administrative apparatus was enlarged with the additional 13 positions of staff persons. At the same time, the Equality Council was not provided with the authority to submit complaints to the Constitutional Court, to be obligatory informed on the discrimination cases considered by judges and to submit its *amicus curiae* on these cases, the salaries of the staff persons, especially of the lower and middle level, are remaining low which is causing permanent staff fluctuation, and public authorities are the ones who are most of all appealing against the decisions of the Equality Council.
2. **Which measures were taken to provide the Equality Council with the authority to submit complaints to the Constitutional Court?**
3. **Which measures were taken to provide the Equality Council with the authority to be obligatory informed on the discrimination cases considered by judges and to submit its *amicus curiae* on these cases?**
4. **Which measures were taken to provide adequate salaries for the staff persons of the Equality Council, especially of the lower and middle level?**
5. **Which measures were taken to ensure prompt implementation of the Equality Council's recommendations by public authorities and to decrease the number of appeals against the decisions of the Equality Council from the part of public authorities?**

## **II. Non – discrimination of transgender individuals (Art. 2, 17 and 26)**

(HRC 11, 12)

6. In its jurisprudence, the Council found that transgender individuals face unjustified difficulties given to the excessively formalist requirements in the proceedings related to changing their sex in their civil status documents. In particular, the Council found that despite the existence of a procedure for changing civil status and identity documents following a change in gender and gender identity,

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<sup>1</sup> Additional information is available on the Council's web page: [www.egalitate.md](http://www.egalitate.md)

<sup>2</sup> [https://www.legis.md/cautare/getResults?doc\\_id=135522&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=135522&lang=ro#)

competent authorities unjustifiably delay the process and require the mandatory presentation of a medical certificate attesting their change of sex, ignoring the individual's gender identity and the right to self-determination.

7. The Council has determined that the Public Services Agency (the public authority which is issuing civil status and ID documents) unjustifiably denies the requests of transgender individuals to amend their civil status documents without a medical certificate attesting their change of sex, in contradiction to the standards endorsed by the Ministry of Health. Thus, transgender persons have to appeal to courts which is making the procedure lasting for years and is making the outcome unpredictable. The Council has ruled in its decision no. 278/21<sup>3</sup> that this situation is discriminatory on the basis of gender identity.

**8. What actions have been taken to ensure accessible and predictable procedures without delays for transgender individuals regarding the modification of their sex in civil status and identity documents in line with human rights standards?**

### **III. Discrimination of persons belonging to ethnic and linguistic minorities (Art. 2, 14, 19 26 and 27)**

9. In the Republic of Moldova, Russian-speakers are experiencing difficulties in filing to the courts civil lawsuits drafted in Russian language. Although Russian language has an official status in two autonomous regions, its use is protected in the Constitution and in the Law on the rights of persons belonging to national minorities and the legal status of their organizations no. 382/2001, some courts do not accept and reject civil lawsuits submitted in Russian without examination on the grounds that they are written in a “foreign language” and are not translated into the state language. In this respect the Council is annually, since 2013,<sup>4</sup> establishing a discrimination in access to the justice system on the ground of language.

**10. What measures have been put in place in order to ensure that courts accept civil lawsuits filed in Russian language?**

11. In a series of cases the Council also established the failure of courts to ensure translation into the Russian language of the judicial procedural acts at all stages of the judicial process, especially at the final stages of the judicial procedure. The Council stated that these acts constituted infringement of the access to justice. The Council has repeatedly recommended that the courts of law get equipped with sufficient number of translators, in order to be able to accommodate the translation needs, thus granting persons involved in judicial procedures an understanding of procedural acts, without incurring additional costs in translations of these documents for the petitioner.

**12. What specific actions have been taken in order to ensure sufficient numbers of translators in courts?**

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<sup>3</sup> [278\\_21\\_Decizie-constatare\\_votat.pdf \(egalitate.md\)](#)

<sup>4</sup> The first decision adopted in 2013 was no. 009/2013 ([http://egalitate.md/wp-content/uploads/2016/04/decizia\\_009\\_4237096.pdf](http://egalitate.md/wp-content/uploads/2016/04/decizia_009_4237096.pdf)), the most recent decisions adopted in 2022 were no. 38/22 ([https://egalitate.md/wp-content/uploads/2016/04/38\\_22\\_Decizie-constatare\\_votat.pdf](https://egalitate.md/wp-content/uploads/2016/04/38_22_Decizie-constatare_votat.pdf)), no. 53/22 ([https://egalitate.md/wp-content/uploads/2016/04/53\\_22\\_Decizie-constatare\\_votat.pdf](https://egalitate.md/wp-content/uploads/2016/04/53_22_Decizie-constatare_votat.pdf)) and no. 54/22 ([https://egalitate.md/wp-content/uploads/2016/04/54\\_22\\_Decizie-constatare\\_votat.pdf](https://egalitate.md/wp-content/uploads/2016/04/54_22_Decizie-constatare_votat.pdf)).

13. Also, the Law on the rights of persons belonging to national minorities and the legal status of their organizations no. 382/2001 at Art.12 paragraph (1) gives to the national minorities the right to address to the public authorities in Romanian or Russian and to receive an answer in the language in which they addressed. However, public authorities do not always fulfill their obligation thus creating impediments for national and linguistic minorities. In this respect the Equality Council had adopted decisions in relation to a wide number of authorities, the most recent one is the decision no. 186/22<sup>5</sup> against the National Prisons Administration.
14. **What measures has the state undertaken in order to guarantee to the persons belonging to national and linguistic minorities the effective exercise of the right to receive a reply in the language in which they addressed to public authorities?**
15. The Equality Council has also found discrimination on the basis of language in access to public information (decisions No 36/18<sup>6</sup> and No 37/18<sup>7</sup>) and recommended that public institutions also publish information on their websites in at least Russian language.
16. **What measures have been taken to ensure that information on the websites of all public authorities is also published in at least Russian language?**

#### IV. Discrimination based on beliefs or religion (Art. 2, 18 and 26)

17. The Equality Council has found discriminatory the impossibility to submit declarations of assets and personal interests for people who have given up the personal numeric code for reasons related to religious beliefs (decisions no. 223/18<sup>8</sup> and no. 67/19<sup>9</sup>). In the Republic of Moldova there are a number of people, mainly civil servants and state officials, who are required by law annually to submit a declaration of assets and interests. Failure to comply with this obligation may result in the sanction or even dismissal of the person. The system for declaring assets and interests is exclusively electronic, which works only in possession of an electronic key. The electronic key is issued only to persons who have a personal numeric code. Respectively, people who have given up on it, for religious reasons, risk being sanctioned and fired for lack of an alternative procedure for either reporting or assigning the electronic key based on another act. The issue was the subject of the referral by the People's Advocate to the Constitutional Court in 2019, which was declared inadmissible, stating that the Constitution does not guarantee a right to waive the identification number and, therefore, the referral does not meet the conditions of admissibility.
18. **What specific measures have been taken in order to ensure that civil servants and state officials who have given up the assignment of a personal numeric code for reasons related to religious beliefs can submit declarations of assets and personal interests?**
19. Another problem concerns the reduced validity term of the identification card for the persons that opted for giving up their national identification number based on religious beliefs. The Council found that for persons who have reached the age of

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<sup>5</sup> [https://egalitate.md/wp-content/uploads/2016/04/186\\_22\\_Decizie-constatare\\_votat.pdf](https://egalitate.md/wp-content/uploads/2016/04/186_22_Decizie-constatare_votat.pdf)

<sup>6</sup> [http://egalitate.md/wp-content/uploads/2016/04/Decizie\\_constatare\\_36\\_2018.pdf](http://egalitate.md/wp-content/uploads/2016/04/Decizie_constatare_36_2018.pdf)

<sup>7</sup> [http://egalitate.md/wp-content/uploads/2016/04/Decizie\\_constatare\\_37\\_2018.pdf](http://egalitate.md/wp-content/uploads/2016/04/Decizie_constatare_37_2018.pdf)

<sup>8</sup> [http://egalitate.md/wp-content/uploads/2016/04/Decizie\\_par--ial\\_constatare\\_223\\_2018.pdf](http://egalitate.md/wp-content/uploads/2016/04/Decizie_par--ial_constatare_223_2018.pdf)

<sup>9</sup> [http://egalitate.md/wp-content/uploads/2016/04/Decizie\\_constatare\\_67\\_2019.pdf](http://egalitate.md/wp-content/uploads/2016/04/Decizie_constatare_67_2019.pdf)

45 years, holders of a national identification number and who are enlisted automatically in the State Registry of the population, the validity term of their identification document is for life. However, in case of persons who have opted to renounce their national identification number and have reached the age of 45 years, a temporary identification document is issued by the authorities, valid for a term of only 10 years, which constitutes a financial disadvantage, since the services of issuing an identification document are paid for. The Council found in its decision no. 211/21<sup>10</sup> that these acts constitute a direct intersectional discrimination based on religious belief and age against persons who have opted to renounce their personal national identification number.

**20. Did the state amend the legislative framework in order to review the conditions of validity of the identification documents for persons reached the age of 45 years who have opted to renounce their national identification number and their registration in the State Registry of the population?**

**V. Conditions of detention (Art. 2, 7 and 10)**

(HRC 27, 28)

21. The Equality Council has found in its decision no. 129/18 adopted on 10 October 2018<sup>11</sup> that some provisions of criminal procedure legislation related to the release of detained persons because of their serious illness are discriminatory taking their procedural status in light of the protection of the right to health and prohibition of torture: while the law provides this opportunity for convicted persons, the law is not providing it for those pending trial (suspects and accused persons).
22. In this respect, the Council has found that there is no reasonable and objective justification for denying an arrested person who suffers from a serious illness the rights to be released from prison. These circumstances are not compatible with the freedom to not be subjected to ill-treatment and with the respect for the inherent dignity of the human person for every individual deprived of their liberty.
23. This situation was also examined by the ECtHR, which ruled in its judgement on the case of *Cosovan v. the Republic of Moldova*<sup>12</sup> (22 March 2022, Application no. 13472/18) that Moldova breached Art. 3 (prohibition of torture) and that different treatment of detainees “may well be discriminatory” referring to the decision no. 129/18 of the Equality Council.

“16. On 10 October 2018 the Council for the Prevention and Elimination of Discrimination and for Ensuring Equality (the CPEDAE)<sup>13</sup> found, in response to the applicant’s complaint and after having examined the arguments of the Ministry of Justice and the NPA [National Prisons Administration], that the impossibility for persons detained pending trial to be released owing to serious illnesses constituted discrimination in relation to persons detained after a final conviction and suffering from similar diseases. It recommended that the applicant’s case be urgently examined without discrimination based on his procedural status and that a mechanism be created to ensure the application of the relevant guarantees to all detainees. [...]

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<sup>10</sup> [http://egalitate.md/wp-content/uploads/2016/04/Decizie\\_constatare-partial\\_211\\_2021\\_votat-1-1.pdf](http://egalitate.md/wp-content/uploads/2016/04/Decizie_constatare-partial_211_2021_votat-1-1.pdf)

<sup>11</sup> [http://egalitate.md/wp-content/uploads/2016/04/Decizie\\_constatare\\_129\\_2018.pdf](http://egalitate.md/wp-content/uploads/2016/04/Decizie_constatare_129_2018.pdf)

<sup>12</sup> <https://hudoc.echr.coe.int/eng?i=001-216352>

<sup>13</sup> From February 2023, following a change in legislation, the name of the Council is 'Equality Council'.

89. Like the domestic investigating judge (see paragraph 11 above), the Court, for the purpose of Article 3 and in the circumstances of a case like the present one, does not see any justification to distinguish between a person convicted by a final judgment and one detained pending trial, when it comes to the suffering caused by detention incompatible with that person's medical condition. Neither the domestic courts nor the Government in their observations gave any satisfactory explanation for such a difference in treatment. In fact, such a difference may well be discriminatory (see *Gülay Çetin*, cited above, §§ 126-133 with further references, as well as the findings of the domestic authority tasked with preventing discrimination, see paragraph 16 above).

90. In the light of the above and taking into account all circumstances of the specific case, the Court concludes that the domestic authorities have not satisfied their positive obligation to prevent the applicant's distress of an intensity exceeding the unavoidable level of suffering inherent in detention. There has thus been a violation of Article 3 of the Convention in the present case."

**24. What mechanism has been put in place in order to ensure that seriously ill persons pending trial can be released from the preventive measure of arrest, regardless of the moment of the disease occurrence?**