

## SUBMISSION TO ECRI'S 6TH ROUND MONITORING AND REEXAMINATION OF THE SITUATION IN REPUBLIC OF MOLDOVA

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<b>Date</b>	15 June 2023

This submission is presented by the Legal Resources Centre from Moldova (LRCM)<sup>1</sup> to the European Commission against Racism and Intolerance (ECRI) in the context of the 6th of monitoring and re-examination of the situation in respect of the Republic of Moldova.

The submission focuses mainly on the topics ECRI will cover during this monitoring round: (i) effective equality and access to rights, (ii) hate speech and hate-motivated violence. LRCM is concerned about Moldova's slow progress in allocating sufficient resources to strengthen the institutional capacity of the equality body, as well as not granting competencies for applying effective, and dissuasive sanctions. The uniform public disaggregated data system is not functional. We rely upon our findings, recommendations, and official data provided by public authorities.

### Effective equality and access to rights

#### Equality bodies

There are two bodies with an equality mandate in the Republic of Moldova – the Equality Council and the Ombudsoffice. The **Ombudsoffice** is an independent multi-mandate human rights institution. It has the following main competencies in the field of equality and non-discrimination: awareness raising and promotion of equality and non-discrimination, examination of individual complaints, including ex-officio, making proposals to improve legislation, and can request a constitutional review<sup>2</sup>. From the victim's perspective, the Equality Council offers more "tangible" remedies since enforcement of the Council's decision can be sought in courts. It is somewhat natural that victims address the Equality Council with discrimination complaints rather than the Ombudsoffice. Therefore, we will further assess only Equality Council as the main body set up with the purpose of preventing discrimination and promoting equality for victims of discrimination.

The law on equality provides expressly that the **Equality Council** acts impartially and independently from other public authorities. It has a series of competencies, which can largely be divided in three types: 1) promoting equality and non-discrimination in public and private sectors, 2) analysing the legislation and public policies through the principle of equality and non-discrimination, and 3) examining individual complaints on discrimination. The Equality Council lacks the function of victim support through legal assistance and litigation, as recommended by ECRI's revised General Policy Recommendation no. 2.

<sup>1</sup> The [Legal Resources Centre from Moldova](http://www.crjm.org) is a non-profit organization that contributes to strengthening democracy and the rule of law in the Republic of Moldova with emphasis on justice and human rights. We are independent and politically non-affiliated.

<sup>2</sup> Article 16 of Law on the People's Advocate (Ombudsman)

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On 2 February 2023, the Parliament voted in final reading the draft law on strengthening the capacities of the Equality Council (former draft law no. 235/2018)<sup>3</sup>. The amendments refer to several important concepts/definitions and the competencies of the Equality Council, **as new protected criteria** - gender identity, marital status, sexual orientation, health condition, HIV status, wealth, origin at birth; **clarification of certain definitions**, as continuous discrimination, supplementing the Contravention Code with two new contraventions: (I) harassment, (ii) victimization, as well provides for the expansion of the scope of contraventions that the Council can find, introduces the right of the Council to submit conclusions (*amicus curiae*) in the courts, strengthening the mechanism for reporting issues to it, examining complaints etc. Also, the new amendments strictly provides that the **members of the Equality Council cannot be persecuted or held legally responsible for the opinions expressed** and the powers they exercise according to the law (as ECRI's GPR no. 2 recommended).

These are important developments to improve the law on equality, activity of Equality Council, including implementing several of ECRI's 2018 recommendations. **However, although requested, the Equality Council did not obtain the right to sanction acts of discrimination and to refer the matters to the Constitutional Court.** These reasonable proposals formulated by the Equality Council and supported by the civil society were not taken into consideration when the draft law was voted. The paradoxical situation at this point is that the Equality Council has the attribution of ascertainment of the contraventions, it may not apply sanctions in such cases. This is a crucial competence in the discrimination area since the shared burden of proof is an acknowledged standard in this area. Shared the burden of proof is impossible to be accomplished in the contravention procedure.

The daily activity of the Equality Council is implemented by its administrative apparatus/staff. The **February 2023 amendments set new staff limit** of the Equality Council to 33 persons (before was 20 persons). Also, allow to Equality Council president to have a chief of staff / and assistant(s). This was an important limitation regarding the activity of the Council since the Council is bound to it irrespective of annual needs fluctuations. The amendments tend to comply with from ECRI's GPR no. 2 that requires in para. 26 that the equality bodies "should decide independently on their internal structure and how to manage their resources, have the powers to recruit and appoint their own staff".

The number of complaints addressed to the Equality Council is an important indicator showing the contribution and importance of the Council's mechanism for victims of discrimination. **The increasing number of complaints and issued decisions shows that needs are still high in the field.** The number of complaints and issued decisions last years are illustrated in the below table:

Statistical data - activity of the Equality Council <sup>4</sup>	2019	2020	2021	2022	Total number
Received complaints	257	297	310	271	1135
Ex-officio complaints	0	2	2	3	7
Issued decisions <sup>5</sup>	235	270	255	216	976
Discrimination found in the decisions	76 (32%)	74 (27%)	49 (19%)	41 (19%)	240 (24.5%)

<sup>3</sup> The law no. 2 of 2 February 2023 for the amendment of some normative acts (revision of the normative framework regarding non-discrimination and ensuring equality), available at: [https://www.legis.md/cautare/getResults?doc\\_id=135489&lang=ro](https://www.legis.md/cautare/getResults?doc_id=135489&lang=ro)

<sup>4</sup> Data collected from Equality Council's activity reports, available at: <http://egalitate.md/publications-category/rapoarte-anuale/>

<sup>5</sup> Includes all issued decisions (both with and with no findings of discrimination).

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In period 2019-2022, the Equality Council issued 976 decisions, being 27.5% more than it issued since its establishment (between 2013 and 2018 - it issued 708 decisions). The number of complaints increased by 20% for a similar period as well. **The number of cases examined by the Equality Council has risen dramatically each year, the highest rate recorded in 2020. This demonstrates how equal treatment legislation is a valuable means for those exposed to discrimination to effect change in their situation and experience.** The percentage of cases with a finding of discrimination reached a high of 32% in 2019 and stood at 19% in 2021 and 2022. Although the Equality Council has considerably increased the number of decisions, still a high rate of complaints declared inadmissible (50-60% on average each year), probably raises the question that the public still does not know all the constituent elements of the forms of discrimination.

According to the Council of Equality, in 2022, the decisions finding discrimination concerned the field of work (24%), access to goods and services available to the public, and damage to dignity (22% each). It is followed by the field of justice (15%) and education (5%) of the total findings. Most often, acts of discrimination took place based on the criteria of spoken language (23%), sexual orientation (18%), ethnic origin (9%), and disability (7%)<sup>6</sup>.

**The main limitation regarding the Equality Council's setup regarding individual complaints/decision-making competencies is that it lacks competencies for applying effective, proportionate, and dissuasive sanctions, as required by the European Union and the Council of Europe when states assign decision-making competencies to equality bodies<sup>7</sup>.**

### ***Lack of sufficient funding***

The state-allocated budget has improved in the past years. Nevertheless, Equality body (including Ombudsman office) is facing a shortage of staff, and this shortage is caused by the low interest of specialists in vacant positions, for which low salaries are offered in relation to the high degree of complexity of the work performed. The level of remuneration of the Equality Council's staff is inadequate, lower even if compared to the Ombudsoffice staff. It is crucial that national human rights institutions be adequately resourced to fulfill their mission and develop in a sustainable and independent way. LRCM signed together with other civil society organizations<sup>8</sup>, a declaration to support the request of the Ombudsman office and Equality Council to be included in the list for the increase of budgetary salaries in the draft law for the amendment of the state budget law for 2023. At the end of 2022, the total number of employees within the Equality Council was only 15 people<sup>9</sup>. Since its establishment, the Equality Council has never filled all its staff positions due to lack of interested candidates and a high fluctuation of staff members. **This is a significant weakness in Equality Council's activity.**

### ***Other follow-up to ECRI previous recommendations:***

**Moldova has still not ratified Protocol No. 12** to the European Convention on Human Rights and the authorities have not indicated any date for its ratification (although they undertook to do so). We recommend ECRI to reiterate the need for Protocol no.12 urgent ratification in the next report.

<sup>6</sup> Equality Council Activity Report for 2022, (pag.6), available at: <http://egalitate.md/wp-content/uploads/2021/01/raport-final-2022-rev-1.pdf>

<sup>7</sup> Art. 15, 2000/43EC, art. 27 2000/78EC and the ECRI General Policy Recommendation no. 2.

<sup>8</sup><https://crjm.org/declaratie-publica-privind-includerea-institutiilor-oficiul-avocatului-poporului-si-consiliul-pentru-egalitate-in-lista-pentru-majorarea-salariilor-bugetare/>

<sup>9</sup> Equality Council Activity Report for 2022, (pag.58), available at: <http://egalitate.md/wp-content/uploads/2021/01/raport-final-2022-rev-1.pdf>

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## Hate speech and hate-motivated violence

### Hate speech

Hate speech is regulated by the *Law on Freedom of Expression*<sup>10</sup>, the *Law on Ensuring Equality*, and by *Contravention Code* under incitement to discrimination<sup>11</sup>. Also, *the Code of Audiovisual Media Services* defines hate speech<sup>12</sup> and expressly prohibits audiovisual programs that are “susceptible to propagate, incite, promote or justify racial hate, xenophobia, antisemitism or other forms of hate based on intolerance or discrimination based on sex, race, nationality, religion, disability or sexual orientation”<sup>13</sup>. The Code expressly prohibits broadcasting of audiovisual programs that amount to hate speech in the national audiovisual space.<sup>14</sup> The Code prohibits commercial audiovisual communications that “include and/or promote any discrimination based on criteria as sex, race, nationality, religion, age, disability, sexual orientation, freedom of belief, of thought”<sup>15</sup>. According to the Code, the media service providers promote gender equality in their activity, including in the distribution of audiovisual programs, and sexist speech is prohibited.<sup>16</sup> **Hence, the Audiovisual Code includes a good basis for preventing and sanctioning the use of discriminatory and hate speech in audiovisual programs, if adequately implemented.**

The Audiovisual Council<sup>17</sup> is an autonomous public authority, organizationally independent from other entities and is responsible for the implementation of the Code of Audiovisual Services. The Audiovisual Council can directly apply a sanction for failure to respect the provisions of the Code of Audiovisual Media Services, depending on the gravity of the committed violation, its effects and the frequency of violations committed in the past 12 months. The Council can apply one of the following sanctions: public warning, fine (in a range from 250 EUR to 5,000 EUR (5,000 MDL to 100,000 MDL, for hate speech and instigation to hate the minimum fine is 40,000 MDL, from 70,000 MDL to 100,000 MDL for repeated violations<sup>18</sup>), suspension of the emission / distribution licence and withdrawal of the emission licence/retransmission authorization.

The Council’s decisions are subject to judicial review. When the Council decisions refer to violations regarding the prohibited audiovisual programs that affect fundamental human rights (including the ones that promote hate and discrimination) and the protection of the national audiovisual space (including from hate speech), the courts shall examine the contested Council’s decision within 30 days. The judicial appeal and cassation in such cases can be submitted within 3 days and shall be examined by the relevant courts in 10 days. A sanction applied by the Audiovisual Council expires within 12 months if no other violation is committed.

The Audiovisual Council was worked since November 2018 in accordance to the methodology for monitoring the broadcasters, which included a chapter dedicated to monitoring xenophobic, racist and hate speech.<sup>19</sup>

<sup>10</sup> Law no. 64 on Freedom of Expression of 23 April 2010.

<sup>11</sup> Contravention Code art. 70<sup>1</sup> (added through law 111/2022)

<sup>12</sup> Art. 1 of the Code of Audiovisual Media Services.

<sup>13</sup> The Code of Audiovisual Media Services, art. 11 para. (2) let. a).

<sup>14</sup> The Code of Audiovisual Media Services, art. 17 para. (3).

<sup>15</sup> The Code of Audiovisual Media Services, art. 63 para. (4) let. d).

<sup>16</sup> The Code of Audiovisual Media Services, art. 18.

<sup>17</sup> More details about the Audiovisual Council are available at <http://www.audiovizual.md/>.

<sup>18</sup> Art. 84 para. (9) of the Code of Audiovisual Media Services.

<sup>19</sup> Audiovisual Coordinating Council, decision 20/180 of 19 November 2018, which adopted the Methodology for monitoring the broadcasters under the jurisdiction of the Republic of Moldova, available in Romanian at [http://www.audiovizual.md/files/Metodologia%20de%20monitorizare%20a%20radiodifuzorilor%20aflati%20sub%20jurisdic%8%9Bia%20Republicii%20Moldova\\_0.pdf](http://www.audiovizual.md/files/Metodologia%20de%20monitorizare%20a%20radiodifuzorilor%20aflati%20sub%20jurisdic%8%9Bia%20Republicii%20Moldova_0.pdf).

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Nevertheless, the decisions of the Audiovisual Council were incomplete and did not contain sufficient arguments to develop precedents regarding the sanctioning of hate speech in the audiovisual media or to be perceived by the media service providers and the public as support to prevent potential future sanctions<sup>20</sup>. Thus, with Council of Europe support, **Audiovisual Council elaborated a new specialized methodology for monitoring hate speech in audiovisual media content**. It was adopted on 26 March 2023<sup>21</sup>.

In 2019 – 2022, the Audiovisual Council examined 9 complaints regarding discriminatory and hate speech, out of which in five cases applied public warnings. It is of good sign that since 2022, Audiovisual Council become more active in ex-officio notification regarding the monitoring and finding hate speech.

Statistical data Audiovisual Council activity <sup>22</sup>	2019	2020	2021	2022	Total number 2019-2022
Received complaints	1	1	2	5	9
Ex-officio complaints	0	3	0	5	8
Issued decisions	1	5	1	1	8
Sanctions applied	0	4	1	0	5
Type of sanctions		public warnings	public warning		

At the same time, according to several civil society reports, in 2021, 229 cases identified were generated by journalists, article authors, and media institutions. Out of them - 66 hate speech situations were identified on TV stations, while in 18 cases the moderators did not react to such messages. In 12 cases the moderators themselves provoked or supported the hate speech and only in six cases they intervened to stop the manifestations of intolerance or to condemn them<sup>23</sup>. Also, during 24.02.2022 - 24.04.2022 in the context of the war of the Russian Federation against Ukraine, identified 83 cases of hate speech, incitement to discrimination, or other forms of intolerance were identified, which were spread 37 times (online media, TV, information platforms and mobile applications).<sup>24</sup> The last number includes both TV and online media, which does not allow for a firm conclusion on how many cases went unnoticed by the Audiovisual Council. Also, LRCM found in 2022 tens of articles/fake social media profiles which denigrated human rights defenders and/or national civil society organizations, for instance, as attacks in the form of messages of incitement to hatred against the LGBT community as organizers of "Moldova Pride", or against some prominent investigative journalists, etc<sup>25</sup>. In any case, **the data indicates that the Audiovisual Council must put more effort into identifying and sanctioning cases of discriminatory and hate speech**. At the same time, the public / the affected groups could also be more active in submitting complaints to the Audiovisual Council.

Complaints regarding hate speech on the internet can be addressed to the Audiovisual Council if the website is managed by audio-visual media, the Press Council if the media portal has signed to the

<sup>20</sup> Combating hate speech in the Media in the Republic of Moldova, Guide for assessing and processing hate speech cases, Council of Europe, November 2022, available at: <https://rm.coe.int/guide-combating-hate-speech-in-the-media-in-moldova-coe-9/1680a9303d>

<sup>21</sup> <https://consiliuaudiovizual.md/news/ca-a-aprobat-metodologia-de-monitorizare-a-discursului-de-ura>

<sup>22</sup> Official data was provided on 26 May 2023 by Audiovisual Council at LRCM's request.

<sup>23</sup> Promo-LEX, Hate speech, and incitement to discrimination in the public space and in the media of the Republic of Moldova during the electoral campaign for the early parliamentary elections of July 11, 2021, available at: <https://promolex.md/wp-content/uploads/2021/09/Hate-Speech-and-Incitement-to-Discrimination.pdf>, pag. 43

<sup>24</sup> Promo-LEX, Hate speech and incitement to discrimination in the public space and in the media of the Republic of Moldova in the context of the war of the Russian Federation against Ukraine, 2022, available at: <https://promolex.md/wp-content/uploads/2022/06/HATE-SPEECH-AND-INCITEMENT-TO-DISCRIMINATION.pdf>, page. 16.

<sup>25</sup> LRCM, Timeline of attacks 2022 against civil society organizations from the Republic of Moldova, available in RO at: <https://crjm.org/radiografia-atacurilor-asupra-organizatiilor-societatii-civile-in-2022/>

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Journalists' Code of Ethics, the Equality Council, police, the prosecution office, or directly in court. Damages can be awarded only by a court and removal of the content is ordered by the court, police, and prosecution's office. **Given the complexity and impact of hate speech promoted via the internet, the authorities should consider developing a regulation or recommendation on combating hate speech on the internet or include this issue as a special focus of the strategy to combat hate speech.**

### ***Hate motivated violence***

Victims of any alleged hate crime or hate motivated violence shall submit complaints to police and/or prosecution office. The Equality Council, the Ombudsoffice and any other public authority can also refer the victim or the complaint to law enforcement bodies.

**In July 2022, law amendments to the Criminal and Contravention Codes (former draft no.301/2016) to expand protections against discrimination and incitement to discrimination or hate-based violence entered into force<sup>26</sup>.** Parliament passed the law after multiple delays since its adoption in a preliminary vote in 2016. The law increases the list of protected grounds for qualifying as hate/bias crimes, maintaining the hate/bias motivation as a general aggravating circumstance, and including it as a separate qualifier for a variety of offenses. It also enhances the penalties for a variety of offenses when committed for reasons of prejudice, such as the illegal performance of surgical sterilization, kidnapping, deprivation of liberty, torture, inhuman or degrading treatment, rape, violent actions of a sexual character, violation of the right to freedom of assembly, robbery, burglary, trafficking in children, and hooliganism, etc. Also regulates Incitement to violent actions for reasons of prejudice, propaganda of genocide, or crimes against humanity, and Incitement to discrimination. The Contravention Code, *modus operandi* applies to such misdemeanours: insult and slander committed for reasons of prejudice; injury to body integrity; intentional destruction or damage to property etc. Incitement to discrimination is an additional offense, with the competence to investigate this misdemeanour appointed to the General Police Inspectorate.

Statistical data regarding the police activity on investigating hate/bias motivation <sup>27</sup>	2022	Middle of 2023	Total number
Criminal cases initiated	15	5	20
Submitted to the merits court	6	2	8
Court decisions issued	1	0	1
Sanctions applied	1	0	1
Type of sanctions	120 hours of unpaid community work	0	

**Overall, these amendments represent a welcome reform of Moldova's legislation on bias-motivated crime and are important additions to efforts to counter intolerance and discrimination,** largely corresponding to good practices in this field at the regional and international levels<sup>28</sup>. Even from table above we might observe some developments on investigation the hate/bias motivation crimes since the law 111/2022 entered into force.

<sup>26</sup> The law no. 111 of 21 April 2022 for amending some normative acts, available at: [https://www.legis.md/cautare/getResults?doc\\_id=131558&lang=ro](https://www.legis.md/cautare/getResults?doc_id=131558&lang=ro)

<sup>27</sup> Official data was provided on 7 June 2023 by Ministry of Internal Affairs at LRCM's request.

<sup>28</sup> See the OSCE/ODIHR Opinion on the draft amendment to the Moldovan Criminal and Contravention Codes related to bias-motivated offences, Opinion-Nr.: HCRIM-MOL/281/2016[AIC], of 15 March 2016, or See the Council of Europe Opinion on Law 111/2022 for amending some normative acts, July 2022

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### **Collection of disaggregated data**

The Equality Council is the only public authority that publishes **data on discrimination**. The Council publishes two types of data: data from public perception surveys about discrimination, in line with ECRI's GPR no. 4, and disaggregated data on discrimination complaints received by the Equality Council and their outcomes, as recommended by ECRI's GPR no. 2. The Ombudsman office does not have specific data collection mechanisms for data on discrimination. It must strengthen and expand its cooperation with Equality Council in this matter.


The National Bureau of Statistics publishes population-related data, which is usually disaggregated by gender, age, gender or area (rural/urban). No specific discrimination-related cases are published unless such data are provided by the specialized bodies, or a separate study/data collection exercise is carried out by the National Bureau of Statistics.


The court system does not have a menu/compartment for tracking discrimination cases and therefore the automated court case system, which is quite advanced in Moldova, does not generate data on discrimination cases. The Equality Council cannot track the court discrimination cases unless it is a party or one of the parties or the court requests its conclusions (expert conclusion).

Data on hate crimes are registered by the Ministry of Internal Affairs (police) and the prosecution office in the same way as all crimes are collected. **There is no separate data collection system for hate crimes.** All crimes are registered in the automated integrated information system for crimes, managed by the Information Centre of the Ministry of Internal Affairs (MIA). The crimes are registered according to the articles of the Criminal Code. However, tracking criminal cases is done only since the criminal process is initiated. Hence registered complaints are not tracked. **When a crime is registered in the respective system, the person that registers it must indicate (manually) if there are aggravated circumstances/bias motivated.** Hate crimes can be extrapolated from the total number of cases by individually extrapolating specific articles and aggravating circumstances. However, the system does not allow for tracking of bias motivation.

The prosecution office has an electronic system for all criminal cases, called "E-file". The system includes all criminal cases from the registration moment to the final decision. The system is not connected yet to the MIA system, nor with the court system. Prosecutors register crimes according to the Criminal Code article and aggravated circumstances can also be registered, but the system does not have further opportunities for registering the bias motivation. It is indicated manually. Similarly, with the data from police, data from the prosecution office need to be extrapolated separately, there is no ongoing system of collecting and publishing hate crimes data. Therefore, there is not unified register for data collection.

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