



Norwegian Ministry
of Foreign Affairs



COUNCIL ON THE PREVENTION
AND ELIMINATION OF DISCRIMINATION
AND ENSURING EQUALITY



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER



Empowered lives.
Resilient nations.

TERMS OF REFERENCE

- Job title:** OHCHR - Team of one International and one National Consultants to conduct a legal analysis on the decisions issued by the Equality Council and by the domestic courts on discrimination cases
- Project:** Supporting National Human Rights Institutions as per International Treaty Bodies and UPR Recommendations
- Contract type:** Individual Contract (IC)
- Contract duration:** 18 April – 15 June 2016
- Expected workload:** International Consultant – up to 14 working days (incl. one 2-days long mission to Moldova);
National Consultant – up to 15 working days

A. Background:

The Office of the United Nations High Commissioner for Human Rights (OHCHR) represents the world's commitment to universal ideals of human dignity. It has a unique mandate from the international community to promote and protect all human rights.

Since July 2008 OHCHR has deployed a Human Rights Adviser to support the work of the Office of the United Nations Resident Coordinator (UN RC) in the Republic of Moldova, in September 2015 replaced by a National Human Rights Coordinator. OHCHR in Moldova led by the National Human Rights Coordinator supports and advises the UN RC Office, United Nations Country Team (UNCT) in Moldova, Government, National Human Rights Institutions (NHRIs), civil society and community groups in strengthening human rights and human rights based approach to development.

During 2015-2016 the OHCHR office in Moldova in full cooperation with UNDP Moldova are implementing the joint project “Supporting National Human Rights Institutions as per International Treaty Bodies and UPR Recommendations”, with the financial support of the Norwegian Government. The overall goal of the project is to contribute to the effective protection and promotion of human rights, equality and non-discrimination in the Republic of Moldova. The project seeks to catalyze the emergence of the strongest possible independent national human rights institutions for Moldova – the Ombudsperson Office and the Council on the Prevention and Elimination of Discrimination and Ensuring Equality (hereby referred as Equality Council) – and to increase their focus around core strategic human rights goals to maximize their impact.

B. Scope of the work and tasks:

The Law No. 121 on ensuring equality was adopted by the Parliament of the Republic of Moldova on 25th May 2012 and entered into force on 1 January 2013¹. The Law No. 298 on the activity of the Equality Council was adopted by the Parliament of the Republic of Moldova on 21st December 2012 and entered into force on 1 January 2013². Since its adoption, the Law No. 121 was subject to continuous discussions among professionals and development partners. Recently, specific legal analysis have been conducted in view of assessing the compliance of the national legislation, including Law No. 121, with the international and regional anti-discrimination standards and practices³. This analysis, as well as other developed by the civil society, propose concrete recommendations for amending the Law No. 121 in the part that refers to the establishment of a sanctioning mechanism for the Equality Council, harmonization of the complaints examination procedure applied by the Equality Council and the courts on cases of discrimination. The implementation of the Law No. 298 on the activity of the Equality Council also raised serious questions among professionals and within the Equality Council itself. Therefore, a legal analysis of the Law No. 298 and its implementation was requested by the Equality Council, on one hand, and is strongly recommended by experts from civil society, on the other hand. A specific analysis of Law No. 298 from the point of view of compatibility with the international standards is under implementation by the Council of Europe in the Republic of Moldova.

Since 2013, the Equality Council examined 348 individual complaints and issued 209 decisions. The Members of the Equality Council initiated ex-officio notes in 17 discrimination situations. Out of the 209 decisions issued by the Equality Council, 35 have been contested in courts, of which 15 by the public authorities. From the total number of the contested decisions 5 were maintained and 2 were cancelled by the Supreme Court of Justice. Up until now, the Council issued 32 contravention reports, 25 of which were annulled by the courts due to procedural considerations. With reference to the above, the need emerges to identify both legal gaps as well as practical ones regarding the decisions and contravention reports issued by the Equality Council and reasons for their cancelation by the courts.

The domestic courts represent an important component of the national mechanism for combating discrimination in the Republic of Moldova. The victims of discrimination can address a complaint directly to the courts and request to confirm the acts of discrimination and ask for compensation for moral and material damages. The courts can also overturn the Equality Council's decisions, following their contestation. Although, the exact number of decisions on discrimination cases issued by the courts is unknown, at least a number of 45 decisions (including the contested decisions of the Equality Council) have been mentioned by various stakeholders during different public events. The decisions issued by the courts on discrimination cases result to be insufficiently grounded and, most often, the interpretation of the non-discrimination principle is distorted up to the level of not finding discrimination, even there are visible signs that discrimination took place.

Hence, the need emerges to carry out a comprehensive legal analysis of the decisions of the Equality Council on substance and procedures (including those contested in courts and those further annulled), as well as of the decisions issued by the courts on discrimination cases (as substance and procedure). The

¹ <http://lex.justice.md/md/343361/>

² <http://lex.justice.md/md/346943/>

³ The most recent compatibility analysis of Moldovan legislation, including Law No 121 on ensuring equality, with the European standards on Equality and non-discrimination was carried out by the Legal Recourses Centre from Moldova: <http://crjm.org/category/publications/drepturile-omului/page/2/>. In the analysis references are also made to specific UN Human Rights standards and UN Treaty Bodies jurisprudence.

purpose of this analysis is to identify the existing gaps, both from a legal perspective and from practice, in order to develop recommendations for the improvement and further harmonization of the national mechanism on combating discrimination in the Republic of Moldova by means of individual complaints analyzed by the Equality Council and domestic courts.

This analysis is expected to be comprehensive and to look into the following two sets of decisions which complement each other:

1. The decisions issued by the Equality Council: this shall be a comprehensive analysis of a selected number of strategic decisions of the Equality Council. A relevant number of decisions that will include both decisions contested in courts as well as decisions that were not contested shall be analyzed. The analysis of contested decisions shall be done from the perspective of the grounds for contesting administrative acts, directly from the perspective of legality, from the point of view of internal procedure of the Council, as well as of its competence. The analysis of the decisions that were not contested in court shall be based on the impact of complaint examination on the beneficiary. The analysis of decisions, *overall*, shall point out the positive and negative aspects of the substantive argumentation and of the procedural aspect by clearly identifying the challenges faced by the Equality Council and offering concrete recommendations.
2. The decisions of the courts with regard to discrimination cases (filed directly with the domestic courts): this shall be a comprehensive analysis of a selected number of decisions issued by the domestic courts, strategic from the point of view of clarification and harmonization of the national mechanism on combating discrimination by means of individual complaints. At the same time, concrete recommendations shall be developed with regard to the enhancement of the cooperation between the Equality Council and the courts, with a view to ensure better legal protection of the victims of discrimination.

The analysis should look into both, **substantial aspects** of the analyzed decisions (correct application of substantial equality standards), and **procedural aspects** of the analyzed decisions (missing procedural steps or elements).

The specific outcome of this assignment shall be recommendations towards the operational framework and institutional setup of the Equality Council and domestic courts, as well as towards the normative framework targeting the identified substantial and procedural gaps.

The team of experts composed of 1 (one) International Consultant and 1 (one) National Consultant shall work under the direct guidance of OHCHR/UNDP Project Managers and Equality Council responsible staff and to perform the following tasks:

1. Draft and submit for approval the methodology for the analysis of the 2 components: (i) analysis of the decisions of the Equality Council and (ii) analysis of court decisions on discrimination cases;
2. Conduct consultations with the Equality Council and, depending on the case, other relevant actors, regarding the procedure and decisions issued by the Equality Council and by the courts on discrimination cases, in order to collect information from primary sources relevant for the analysis;
3. In consultation with the Equality Council and OHCHR/UNDP, select a relevant set of decisions (issued by the Equality Councils and domestic courts on discrimination cases) for further analysis;
4. Conduct the analysis guided by the two components, as specified above, and provide concrete and usable recommendations for further improvement of the regulatory framework and the practice of the Equality Council and domestic courts within the framework of the complaints mechanism on discrimination issue;

5. Discuss the first and final drafts of the analysis with the Equality Council and OHCHR /UNDP and make the necessary adjustments;
6. Discuss the findings and recommendations with other relevant actors identified by the consultants together with the Equality Council and OHCHR/UNDP.

In order to fulfill these tasks, the following activities shall be implemented by each Consultant hired:

International Consultant	National Consultant
Develop the methodology and action plan for the analysis of decisions and consult it with the Equality Council and OHCHR/UNDP. 1,5 working days	Provide relevant information for the methodology and action plan development 1 working day
Conduct consultations with the Equality Council and, depending on the case, other relevant actors, regarding the procedure and decisions issued by the Equality Council and the courts on discrimination cases, in order to collect information from primary sources relevant for the analysis. Presentation of the main findings 2 working days (one 2-days long mission to Moldova during the period 4-15 April 2016)	Facilitate the consultation process and collection of information relevant for the analysis 4 working days
Select the set of decisions for further analysis and send it for approval to the Equality Council and OHCHR/UNDP 1 working day	Collect the decisions, in particular those issued by the courts, as well as collection of other relevant information for the analysis 3 working days
Carry out the analysis of the decisions of the Equality Council and of the courts on discrimination cases and draft the initial report with findings and recommendations 7 working days	Provide relevant information to the International Consultant and, when relevant, engage directly in the analysis of decisions 5 working days
Consult the initial report with the Equality Council and OHCHR/UNDP and adjust it based on the received recommendations and define the final report 2 working days	Engage in the process of adjusting the initial report of analysis and contribute to finalization of the report 1 working day
Discuss the findings and recommendations with the main stakeholders (on-line contribution) 0,5 working day	Discuss the findings and recommendations with the main stakeholders 1 working day
Estimated number of working days: 14	Estimated number of working days: 15

The entire activity of the team of Consultants will be coordinated directly by the Program Coordinator on behalf of the OHCHR/UNDP and the Equality Council. The National Consultant shall provide technical and substantive support during the analysis carried out by the International Consultant.

C. Deliverables and timeframe:

The team of Consultants shall develop a detailed action plan based on the framework below. The following deliverables and deadlines are expected to be met by the team of Consultants:

Deliverables	Deadlines
1. The methodology of the analysis elaborated and submitted for approval to OHCHR/UNDP and the Equality Council, which refers to the 2 aspects: <ul style="list-style-type: none">- the analysis of the decisions of the Equality Council, based on the selected list;- the analysis of courts' decisions on discrimination cases, based on the selected list;	22 April 2016
2. The list of decisions for further analysis coordinated with the Equality Council and OHCHR/UNDP, including both components of the analysis;	29 April 2016
3. The initial report on the analysis submitted and discussed with the Equality Council and OHCHR/UNDP;	20 May 2016
4. Final report on the analysis submitted to the Equality Council and OHCHR/UNDP;	31 May 2016
5. Discussions on the findings and recommendations with relevant stakeholders held.	15 June 2016

All written outputs shall be submitted in English, in electronic format, and approved by OHCHR/UNDP.

D. COMPOSITION OF THE TEAM:

The International Consultant will take the lead in the assignment and will be assisted by the National Consultant. The members of the team of Consultants must not have been associated with the project's formulation, implementation or monitoring.

The International Consultant will undertake one field visit to Moldova during the period 25-29 April 2016 (2 working days). The National Consultant will provide substantive feedback and support to the International Consultant in the construction of the analysis report, in conducting consultations, and organizing the field mission to Moldova. The team of Consultants will retain enough flexibility to determine the best approach in collecting and analyzing data for the final report of the analysis.

E. INSTITUTIONAL ARRANGEMENTS:

The work of the team of Consultants will be performed remotely as home-based deskwork. The methodology and tools for the analyses should be approved by OHCHR/UNDP and the Equality Council prior to its application, as well as continuous consultations with the Equality Council and OHCHR/UNDP should be conducted as often as guidance is needed. The team of Consultants reports to the OHCHR Program Coordinator based on the deliverables and deadlines specified in the section above. The team of Consultants may be provided with those decisions of the Equality Council already available in English and other relevant decisions may be translated from Romanian to English upon request. A translator for English-Romanian-English will be provided during the field mission to Moldova (if need be).

F. FINANCIAL ARRANGEMENTS AND APPLICATION PACKAGE:

Each candidate will be required to submit an aggregated financial offer (“aggregated financial offer” is the total sum of all financial claims of the candidate for accomplishment of the task), which includes proposed consultancy fee, travel costs, visa costs (if required), per diem (for accommodation, meals and local transport / communication. The consultant will be provided with the necessary administrative and logistical support to enable them deliver on the expected outputs.

Payment will be disbursed in one installment upon submission and approval of all deliverables and certification by the OHCHR Program Coordinator that the services have been satisfactorily performed.

Travel

All envisaged travel costs must be included in the financial proposal. This includes all travel to join duty station/repatriation travel. In general, UNDP should not accept travel costs exceeding those of an economy class ticket. Should the IC wish to travel on a higher class he/she should do so using their own resources.

In the case of unforeseeable travel, payment of travel costs including tickets, lodging and terminal expenses should be agreed upon, between the respective business unit and Individual Consultant, prior to travel and will be reimbursed.

Documents to be included when submitting the proposals:

Interested individual consultants must submit the following documents/information to demonstrate their qualifications:

1. Proposal: explaining why they are the most suitable for the work including past experience in similar projects and provide a brief methodology on how they plan to approach the analysis (maximum 1,5 page);
2. Financial proposal (in USD, specifying a total requested amount per day, including all related costs, e.g. fees, per diems, travel costs, phone calls etc.);
3. Duly completed and signed P11 Form, and at least 3 contacts for references.

G. REQUIRED QUALIFICATIONS AND COMPETENCIES

The International and National Consultants must possess the following minimum qualifications:

International Consultant:

I. Academic Qualifications:

- Master’s Degree or equivalent (5-year university education) in Law, Public Administration, Human Rights or other relevant field;

II. Years and sphere of experience:

- At least 5 years of proven professional experience in legal research and analysis pertaining to non-discrimination legislation, human rights and equality or other human rights relevant field, including experience in the CEE/CIS region;

III. Competencies:

- Proven experience and knowledge of non-discrimination and equality principles, including research, analysis and drafting analytical reports in the area of equality and non-discrimination;

- Knowledge and experience working with National Human Rights Institutions, especially non-discrimination bodies with a similar mandate to Equality Council in Moldova;
- Experience/knowledge of processes of issuing decisions within a National Human Rights Institution with a complaint mechanism is a strong advantage;
- Knowledge of non-discrimination legislation and international human rights commitments of the Republic of Moldova is an asset;
- Effective communication, strong analytical and reporting skills;
- Knowledge of English, both written and spoken, for the purposes of the assignment. Knowledge of Romanian and/or Russian is a strong asset.

IV. Personal qualities:

- Proven commitment to the core values of the United Nations, in particular, respecting differences of culture, gender, religion, ethnicity, nationality, language, age, HIV status, disability, and sexual orientation, or other status;
- Responsibility;
- Punctuality;
- Attention to detail.

UN in Moldova is committed to workforce diversity. Women, persons with disabilities, Roma and other ethnic or religious minorities, persons living with HIV, as well as refugees and other non-citizens legally entitled to work in the Republic of Moldova, are particularly encouraged to apply.

National Consultant:

I. Academic Qualifications:

- Master's Degree or equivalent (5-year university education) in Law, Public Administration, Human Rights or other relevant field;

II. Years and sphere of experience:

- At least 2 years of proven professional experience in legal research and analysis pertaining to non-discrimination legislation, human rights and equality or other relevant human rights field;

III. Competencies:

- Proven experience and knowledge of non-discrimination and equality principles, including research, analysis and drafting analytical reports in the area of equality and non-discrimination;
- Knowledge of non-discrimination legislation and international human rights commitments of the Republic of Moldova;
- Knowledge and experience working with/on National Human Rights Institutions, especially Equality Council in Moldova, would be a strong advantage;
- Knowledge/experience of issuing the decisions processes within the Equality Council and the domestic courts;
- Effective communication, strong analytical and reporting skills;
- Knowledge of English and Romanian, both written and spoken, for the purposes of the assignment. Knowledge of Russian is an advantage.

IV. Personal qualities:

- Proven commitment to the core values of the United Nations, in particular, respecting differences of culture, gender, religion, ethnicity, nationality, language, age, HIV status, disability, and sexual orientation, or other status;
- Responsibility;
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