



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination

### Opinion adopted by the Committee under article 14 of the Convention, concerning communication No. 60/2016\*, \*\*

<i>Communication submitted by:</i>	Grigore Zapescu (represented by counsel, Dumitru Sliusarenco)
<i>Alleged victim:</i>	The petitioner
<i>State party:</i>	Republic of Moldova
<i>Date of communication:</i>	30 June 2016 (initial submission)
<i>Date of adoption of opinion:</i>	22 April 2021
<i>Document references:</i>	Decision taken pursuant to rule 91 of the Committee's rules of procedure, transmitted to the State party on 23 November 2016 (not issued in document form)
<i>Subject matter:</i>	Racial discrimination in access to employment; lack of compensation
<i>Procedural issues:</i>	Committee's competence <i>ratione temporis</i> ; exhaustion of domestic remedies
<i>Substantive issue:</i>	Discrimination on the grounds of national or ethnic origin
<i>Articles of the Convention:</i>	1 (1), 2 (1) (d), 5 (e) (i), 6 and 7

1. The petitioner is Grigore Zapescu, a national of the Republic of Moldova, who is of Roma ethnicity and was born in 1992. He claims to be a victim of a violation by the State party of articles 1 (1), 5 (e) (i), 6, and 7 read in conjunction with article 2 (1) (d), of the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>1</sup> The petitioner is represented by counsel.

#### Facts as submitted by the petitioner

2.1 In November 2012, the petitioner and his friend, B.V., who were both law students at the time, applied for a position as a waiter advertised by a restaurant chain called Andy's Pizza. On 29 November 2012, the petitioner and his friend were interviewed for the position

\* Adopted by the Committee at its 103rd session (19–30 April 2021).

\*\* The following members of the Committee participated in the examination of the communication: Silvio José Albuquerque e Silva, Sheikha Abdulla Ali Al-Misnad, Nouredine Amir, Marc Bossuyt, Chinsung Chung, Bakari Sidiki Diaby, Ibrahima Guissé, Rita Izsák-Ndiaye, Gun Kut, Li Yanduan, Mehrdad Payandeh, Verene Albertha Shepherd, Stamatia Stavrinaki, Faith Dikeledi Pansy Tlakula and Yeung Kam John Yeung Sik Yuen.

<sup>1</sup> The Convention was ratified by the State party on 26 January 1993. The State party made the declaration under article 14 of the Convention on 8 May 2013.



and asked to fill in a questionnaire, in which the petitioner indicated that he spoke Romani among other languages. He allegedly confirmed his Roma origin during his interview. The meeting took about 15 minutes and the petitioner was told that he would be notified of the outcome of the selection process towards the end of that week, but he was never contacted again. On the same day, immediately after the petitioner, B.V. was also interviewed. At the end of that interview, he was informed that his job application had been successful and he was invited to take part in a training session.<sup>2</sup> Eventually, B.V. decided not to accept the job offer because of the discriminatory treatment that his friend had been subjected to.

2.2 On 24 January 2013, the petitioner initiated civil proceedings based on the Equality Law and the Labour Code requesting the court to establish that he had been discriminated against on the ground of his Roma ethnicity and that his right to work had also been violated. The petitioner asked the court to award him damages for the violation of his rights. On 27 June 2014, Centru District Court in Chisinau dismissed the petitioner's case for lack of sufficient substantiation. On 22 January 2015, the Court of Appeal of Chisinau, aligning itself with the position of the lower court, upheld the first instance decision. On 16 September 2015, the Supreme Court of Justice dismissed the petitioner's appeal. He was informed of that decision on 22 January 2016.

### **Complaint**

3.1 The petitioner claims to be the victim of a violation by the Republic of Moldova of articles 1 (1), 5 (e) (i), 6, and 7 read in conjunction with article 2 (1) (d), of the Convention. Relying on article 1 (1) of the Convention, he claims to be a victim of racial discrimination. In this respect, he argues that he and B.V. applied for the same position, for which they were interviewed on the same day. Since their appearance is similar, they speak the same language and have identical work experience, the only visible difference between the two of them that could possibly explain the rejection of his job application is his ethnic origin.

3.2 Relying on article 7 read in conjunction with article (2) (1) (d) of the Convention, the petitioner submits that on the basis of the relevant anti-discrimination laws being adopted at the national level, it may appear that the State party has complied with the requirements stemming from the cited articles of the Convention, in particular because the domestic laws prohibit racial discrimination. At the same time, he argues that, as demonstrated in his own case and that of many others, no effective measures have been put in place to implement the applicable laws and national policies to ensure that Roma are not discriminated against, especially in employment matters.<sup>3</sup>

3.3 Regarding the alleged violation of article 5 (e) (i) of the Convention, the petitioner submits that the State party did not ensure the right to work free from discrimination, and that even though he brought his claims to the attention of the domestic authorities, they failed to acknowledge the violation of his rights and to provide redress for the grievances he had suffered.

3.4 Relying on article 6 of the Convention, the petitioner claims that the State party was to provide him with an effective remedy for the violation of his rights. In this respect, he argues that in cases of allegation of discrimination, the State party should act proactively and combat unlawfulness to prevent the occurrence of similar incidents in the future. The petitioner asserts that he was nonetheless deprived of his fair trial rights in the assessment of his complaint, especially because the domestic courts, once he had established a *prima facie* case of discrimination, failed to shift the burden of proof to the respondent company as required under domestic as well as international laws. With regard to the latter, the petitioner recalls that the concept of shifted burden of proof appears in the case law of the European Court of Human Rights, which states that once the applicant establishes "a rebuttable presumption that the effect of a measure or practice is discriminatory, the burden then shifts

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<sup>2</sup> It appears from the court documents that B.V. was informed of his successful application on the same day but not at the end of the interview.

<sup>3</sup> The petitioner mentions that concerns relating to access to employment of persons of Roma ethnicity in the Republic of Moldova have been expressed by the Special Rapporteur on extreme poverty and human rights, the Committee on Economic, Social and Cultural Rights and the European Commission against Racism and Intolerance.

to the respondent State, which must show that the difference in treatment is not discriminatory".<sup>4</sup> The petitioner further refers to the case law of the Court of Justice of the European Union, in which the Court has declared in a number of cases that if the burden of proof is not shifted, then it cannot provide effective protection against discrimination in certain situations.<sup>5</sup> The requirement to introduce the shifting of burden of proof was later codified in a number of European Union directives on non-discrimination.<sup>6</sup> The petitioner further notes that the Human Rights Committee applied, implicitly, the same standard in one of its decisions.<sup>7</sup> In addition, the petitioner explains that discrimination occurs when someone is treated less favourably than another person due to his or her belonging to a certain group having protected characteristics. The burden of proof, as normally applied in civil proceedings, that is, if not shifted, would pose an undue burden on victims of discrimination, who are often not able to prove the causal link between their protected characteristics and the disadvantage suffered, in particular because the main pieces of evidence are usually in the possession of the discriminator. In this context, the petitioner submits that he listed Romani as his mother tongue, which strongly suggests that he is Roma. For the purposes of assessing whether he was discriminated against, he refers to B.V., who was in an identical situation, and compared to whom the petitioner suffered disadvantage that was manifested in the rejection of his job application. Furthermore, relying on the jurisprudence of the Court of Justice of the European Union, the petitioner submits that a presumption may be deduced from the failure of the respondent company to grant access to information that may be relevant for the assessment of a discrimination claim.<sup>8</sup> In this connection, he underlines that the respondent company refused to submit documentation relating to the recruitment process to rebut the petitioner's claim that his ethnicity was known by the hiring personnel and that it was a factor that had been taken into account in the selection process.

#### **State party's observations on admissibility and the merits**

4.1 On 9 March 2017, the State party submitted its observations on the admissibility and the merits of the communication, in which it first restates the facts of the case and presents the position of various State authorities. The Prosecutor's Office of the Republic of Moldova submits that it was not informed of the case at the time, nor was it involved in any other way in the domestic lawsuit, and therefore did not provide any observations concerning the substance of the case.

4.2 The Ministry of Health, Labour and Social Protection recalls that the Constitution of the Republic of Moldova prohibits discrimination on any grounds, including ethnicity, which is reaffirmed by the Labour Code in the domain of employment. The Ministry submits that, contrary to what the petitioner argues, there are a number of mechanisms to ensure that these norms are being enforced. These include an option for the injured party to request the courts to establish that the denial of employment has been unlawful and require the employer to enter into an employment contract with the person concerned. The Ministry underlines that the petitioner in the present case did not avail himself of this opportunity but asked for compensation on the ground of alleged discrimination against him. Regarding the lawfulness of the rejection of the petitioner's application, the Ministry considers that the selection process was governed by a regulation, adopted at the company level, that establishes clear

<sup>4</sup> European Court of Human Rights, *D.H. and others v. Czech Republic* (application No. 57325/00), judgment of 13 November 2007, para. 189.

<sup>5</sup> Judgment of the Court of Justice of the European Union in *Handels- og Kontorfunktionærernes Forbund I Danmark v. Dansk Arbejdsgiverforening, acting on behalf of Danfoss* (case 109/88); and judgment of the Court of Justice of the European Union in *Dr. Pamela Mary Enderby v. Frenchay Health Authority and Secretary of State for Health* (case C-127/92).

<sup>6</sup> Council Directive 2000/43/CE of 29 June 2000 on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/78/CE of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

<sup>7</sup> See *Bhinder v. Canada* (CCPR/C/37/D/208/1986).

<sup>8</sup> Judgment of the Court of Justice of the European Union in *Meister v. Speech Design Carrier Systems GmbH* (case C-415/10).

and non-discriminatory recruitment criteria. Consequently, the outcome of the selection process should be considered to have been based on legitimate grounds.

4.3 The Ombudsman's Office of the Republic of Moldova restates the relevant national legislation<sup>9</sup> and various human rights instruments, including several articles of the Convention.<sup>10</sup> The Ombudsman's Office submits that it does not contest the admissibility of the complaint. It notes that even though the petitioner has failed to bring his case before the Council on Preventing and Eliminating Discrimination and Ensuring Equality, the latter nonetheless provided the domestic courts with an advisory opinion drawing the courts' attention to the need for reversal of the burden of proof in discrimination cases and giving some guidance as to the interpretation of the term "essential occupational requirements",<sup>11</sup> for which there had been no jurisprudence at the domestic level. Subsequently, the Ombudsman's Office adds that it appears from the facts of the case as submitted by the petitioner that he presented a prima facie case for discrimination and that the respondent company failed to demonstrate that the petitioner had not been discriminated against on the ground of his ethnicity. At the same time, the Ombudsman's Office argues that it appears from the decision of the Court of Appeal of Chisinau that several employees of different ethnicities have confirmed the friendly and tolerant attitude of the company's administration toward its employees. The Ombudsman's Office then restates some general principles concerning discrimination cases as established in the case law of the European Court of Human Rights.<sup>12</sup> It further recalls the need for codifying the requirement to inform applicants about the outcome of recruitment processes and notes that information on ethnicity should be excluded from employment questionnaires.

4.4 In addition, the State party<sup>13</sup> recalls the requirement for exhaustion of domestic remedies and notes that even though it appears from the case file that the Criminal Panel of the Supreme Court of Justice ruled on the case, the petitioner failed to submit an extraordinary appeal against this decision as provided for by labour law. Lastly, the State reiterates that its authorities support the position of international bodies that racially motivated violence violates human dignity, which would require greater vigilance and actions.

#### **Petitioner's comments on the State party's observations on admissibility and the merits**

5.1 On 19 March 2018, the petitioner submitted comments on the State party's observations on the admissibility and the merits of his communication. He welcomes the State party's efforts to engage different national authorities in the dialogue relating to his case, but notes with concern that whereas the Council on Preventing and Eliminating Discrimination and Ensuring Equality, the most competent authority in discrimination matters, was not invited to express its views concerning his case, the General Prosecution Office was given the opportunity to submit its observations, even though his complaint had no criminal law aspect.

5.2 Regarding the admissibility of the complaint, the petitioner first underlines that contrary to what the State party asserts, the Criminal Panel of the Supreme Court of Justice did not rule on his case. In view of the fact that he initiated civil proceedings, the

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<sup>9</sup> Arts. 1 and 2 of Act No. 382 on the rights of persons belonging to national minorities and the legal status of their organizations; and arts. 7 and 19 of Act No. 121 on equality.

<sup>10</sup> Art. 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights); arts. 2 (1), 5, 6 and 7 of the Convention; and art. 6 (1) of the International Covenant on Economic, Social and Cultural Rights.

<sup>11</sup> Art. 7, para. 5, of Law No.121 on ensuring equality provides that any distinction, exclusion, restriction or preference regarding a particular job does not constitute discrimination provided that the specific nature of the activity or the conditions in which it is being carried out requires certain "determined professional requirements", on condition that the aim is legitimate and the requirement is proportionate.

<sup>12</sup> European Court of Human Rights, *D.H. and others v. Czech Republic*.

<sup>13</sup> The reference here is presumed to be to the Bureau of Interethnic Relations, which submitted the observations and which is responsible for enforcing the provisions of the Convention at the domestic level.

extraordinary appeal the State party refers to was not a viable option for the petitioner, as it is a remedy available only in criminal cases.

5.3 Regarding the merits of his case, the petitioner submits that the domestic courts have misinterpreted the definition of a “genuine and determining occupational requirement” that in certain scenarios could serve as lawful justification for non-hiring, should the applicant not fulfil this requirement. In this respect, he reiterates that he applied for a position as a waiter and that no such requirement was indicated in the job description, nor did the respondent company point to such a requirement in the course of the court proceedings. It was therefore erroneous for Centru District Court in Chisinau to conclude that Andy’s Pizza had refused to hire the petitioner because he had failed to meet such a requirement. Furthermore, the petitioner reiterates that the mechanisms established to implement the relevant anti-discrimination laws are not effective. This is clearly demonstrated by the court proceedings themselves, in which the respondent company was not required to justify the differential treatment of the petitioner, contrary to what should have followed from the requirement to reverse the burden of proof once a prima facie case of discrimination had been established. Moreover, Centru District Court in Chisinau held it against the petitioner that he did not provide any documentation to prove his Roma ethnicity. The petitioner further contests the Ministry’s argument that he was not discriminated against because the recruitment process was conducted in compliance with the company’s internal non-discriminatory regulations. In this respect, the petitioner notes that such regulations have never been adduced as evidence by the respondent company before the domestic courts.

### **Third-party submission**

6.1 On 9 March 2018, the Working Group on Communications, acting on behalf of the Committee, decided to admit a submission from the Legal Resources Centre from Moldova, provided that it was submitted through either of the parties.

6.2 On 7 August 2018, the Legal Resources Centre from Moldova, through the petitioner’s counsel, submitted its intervention to the Committee. In its submission, it describes its main activities, provides some information concerning the deficiencies of judges’ training in the Republic of Moldova, and explains the importance of the direction of the evolving court practice in the State party, underlining that non-discrimination laws applied by judicial authorities have only been recently adopted. Regarding the specificities of the present complaint, the Legal Resources Centre from Moldova submits that the domestic court’s assessment of the evidence indicates a systemic failure regarding the understanding of how the burden of proof should apply in discrimination cases. In this respect, the third party emphasizes that the first instance court held it against the petitioner that he did not provide evidence regarding his ethnic origin, other than his own statement, even though such a request runs counter to international standards. Moreover, the courts failed to rely on the presumption of discrimination that could have been inferred from the respondent company’s failure to submit as evidence the petitioner’s employment application form/questionnaire. Although the petitioner did have a copy of the questionnaire, it was not admitted as evidence because he had missed a procedural deadline. In addition, unreasonable inferences were made by the courts on the basis of the fact that the petitioner did not turn to the Council on Preventing and Eliminating Discrimination and Ensuring Equality, and also on the grounds that he did not request the courts to order the company to employ him, but rather to be awarded damages. Furthermore, the Legal Resources Centre from Moldova finds it problematic that the courts relied heavily on witness testimonies of other employees of the same company and failed to recognize the intersectionality of ethnicity, age and gender, and the particular vulnerability of a young Roma man seeking an entry-level position involving direct service to clients. In addition, the courts failed to ask the respondent company to justify the candidates’ differential treatment, which led to an immediate job offer in the case of the non-Roma candidate and to no follow-up in the case of the Roma candidate.

6.3 On 20 November 2018, the Committee transmitted the third-party submission of 7 August 2018 to the State party, which did not submit any observations in response.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

7.1 Before considering any claim contained in a communication, the Committee must decide, pursuant to article 14 (7) (a) of the Convention, whether the communication is admissible.

7.2 The Committee notes that the petitioner submitted his communication to the Committee on 30 June 2016, that is, within six months of the date of service of the copy of the decision of the Supreme Court of Justice, which took place on 22 January 2016. The Committee further notes that the State party has not contested the admissibility of the complaint on this ground, and it therefore considers that the petitioner has complied with the six-month requirement under article 14 (5) of the Convention.

7.3 Furthermore, as per rule 91 (c) of the Committee's rules of procedure, the Committee is to ascertain that the communication is compatible with the provisions of the Convention. In this respect, the Committee notes that the facts of the case took place in November 2012, that is, before the entry into force of article 14 for the State party on 8 May 2013. However, the Committee notes that the decisions of the domestic courts were handed down on 27 June 2014, 22 January 2015 and 16 September 2015. The Committee concurs with the position of other committees that judicial decisions of the national authorities are to be considered as part of the facts of the case when they are the result of procedures directly connected with the initial facts, actions or omissions that gave rise to the violation, provided they are capable of remedying the alleged violation. If such decisions are adopted after the entry into force of article 14 for the State party concerned, the criterion provided for in rule 91 (c) of the Committee's rules of procedure will not affect the admissibility of the communication, since, when these remedies are exercised, the national courts have the possibility of considering the complaints, putting an end to the alleged violations and potentially providing redress.<sup>14</sup> In any event, in the present case, the violations claimed by the petitioner seem to largely relate to the deficiencies of the remedies provided by the State party, namely the examination of the petitioner's discrimination claim by the civil courts and the subsequent judicial decisions delivered in 2014 and 2015, which failed to apply anti-discrimination standards and perpetuated his allegedly unlawful treatment by a private employer.<sup>15</sup> In this respect, the Committee takes note of the fact that the civil proceedings initiated by the petitioner allowed the national courts to examine in detail the evidence available on file and consider the alleged violations, with a view to providing redress if appropriate. In the light of the foregoing, the Committee cannot declare the communication inadmissible under rule 91 (c) of the Committee's rules of procedure.

7.4 Lastly, the Committee notes the State party's assertion that the petitioner has not exhausted all available remedies as he has failed to submit an extraordinary appeal against the decision of the Criminal Panel of the Supreme Court of Justice. In this respect, the Committee is mindful of the petitioner's argument that it was not the Criminal Panel but the Civil Panel of the Supreme Court of Justice that ruled on his case and that the extraordinary appeal the State party refers to is available only in criminal cases. The Committee observes that the petitioner's statement is supported by the court documents on file, and therefore

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<sup>14</sup> See, for example, the decisions of the Committee on Economic, Social and Cultural Rights in *M.L.B. v. Luxembourg* (E/C.12/66/D/20/2017), para. 7.2; *S.C. and G.P. v. Italy* (E/C.12/65/D/22/2017), para. 6.6; *Arellano Medina v. Ecuador* (E/C.12/63/D/7/2015), para. 8.3; *Trujillo Calero v. Ecuador* (E/C.12/63/D/10/2015), para. 9.5; *Alarcón Flores et al. v. Ecuador* (E/C.12/62/D/14/2016), para. 9.8; *Martins Coelho v. Portugal* (E/C.12/61/D/21/2017), para. 4.2; *C.A.P.M. v. Ecuador* (E/C.12/58/D/3/2014), para. 7.4; and *I.D.G. v. Spain* (E/C.12/55/D/2/2014), para. 9.3. See also the decisions of the Committee on the Rights of Persons with Disabilities in *Jungelin v. Sweden* (CRPD/C/12/D/5/2011), para. 7.6; and *Bacher v. Austria* (CRPD/C/19/D/26/2014), paras. 8.4–8.7; and the decisions of the Human Rights Committee in *Kouidis v. Greece* (CCPR/C/86/D/1070/2002), para. 6.3; and *Singarasa v. Sri Lanka* (CCPR/C/81/D/1033/2001), para. 6.3.

<sup>15</sup> See, *mutatis mutandis*, *Durmic v. Serbia and Montenegro* (CERD/C/68/D/29/2003), para. 6.4.

considers that the remedy in question, even supposing that it is effective, was not available in the petitioner's case for the purposes of article 14 (7) of the Convention.

7.5 As the Committee finds no obstacles to the admissibility of the present communication, it declares it admissible and proceeds with its consideration of the merits.

#### *Consideration of the merits*

8.1 The Committee has considered the present communication in the light of all the submissions and documentary evidence produced by the parties, as required under article 14 (7) (a) of the Convention and rule 95 of its rules of procedure.

8.2 The Committee notes that the first issue to consider is whether with regard to the rejection of the petitioner's application the State party violated its obligation to protect the petitioner from discrimination on the grounds of ethnic origin under article 5 (e) (i) of the Convention. The second issue to consider is whether the review by the tribunals amounted to a violation of article 6 of the Convention.

8.3 According to article 5 (e) (i) of the Convention, States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, the enjoyment of the right to work. The Committee recalls its general recommendation No. 27 (2000) and notes that effective legislation prohibiting discrimination in employment and all discriminatory practices in the labour market affecting members of Roma communities, including recruitment processes, is required, in conjunction with effective protection of potential victims against such practices. In this regard, the Committee notes with concern the State party's observation that the selection process was governed by a regulation, adopted at the company level, that established clear and non-discriminatory recruitment criteria, and that consequently, the outcome of the selection process should be considered to have been based on legitimate grounds. The Committee clarifies that the obligations arising from article 5 (e) (i) are not fulfilled merely by providing for a legislative and regulatory framework against racial discrimination in access to employment, but include the obligation to provide for effective monitoring of the implementation of non-discriminatory recruitment policies in practice. However, the claims brought and substantiated before the Committee raise mainly issues related to effective protection and remedies against racial discrimination and will therefore be examined under article 6 of the Convention only.

8.4 According to article 6, "States parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention." Although on a literal reading of the provision it would appear that an act of racial discrimination would have to be established before a petitioner would be entitled to protection and a remedy, the Committee notes that the State party must provide for the determination of this right through the national tribunals and other institutions, a guarantee which would be void were it unavailable in circumstances where a violation had not yet been established. While a State party cannot be reasonably required to provide for the determination of rights under the Convention no matter how unmeritorious such claims may be, article 6 provides protection to alleged victims if their claims are arguable under the Convention. In view of these considerations, the Committee proceeds to examine the petitioner's claims under article 6 of the Convention.

8.5 In this context, the Committee notes the uncontested information brought before it by the petitioner, who is of Roma origin, that his application for a position as a waiter was rejected by a restaurant chain in 2012. The Committee notes, in particular, the petitioner's claim that on the basis of this incident, he brought a prima facie case of racial discrimination to the attention of the domestic courts, and it was therefore for the respondent company to provide reasonable and convincing arguments to justify the unequal treatment he had been subjected to. On the other hand, the Committee notes the State party's position contesting the petitioner's claims primarily on the basis that the domestic courts had examined the case and decided that the petitioner was not able to sufficiently substantiate his claim that he had been discriminated against. Regarding the effectiveness of the judicial remedies in particular,

including the procedural issue concerning reversal of the burden of proof, the Committee notes that the State party did not provide any specific arguments.

8.6 In its assessment of whether the petitioner has been afforded effective remedies by the domestic courts as required under article 6 of the Convention, the Committee first recalls its jurisprudence establishing that presumed victims of racial discrimination are not required to show that there was discriminatory intent against them.<sup>16</sup> Although the Committee is mindful of the national legislation of the State party providing for reversal of the burden of proof in discrimination matters,<sup>17</sup> it recalls the petitioner's claim that the domestic courts failed to apply these domestic laws in accordance with the Convention. In this respect, the Committee notes the argument of the petitioner that Centru District Court in Chisinau held it against him that he did not provide evidence regarding his ethnic origin, other than his own statement. In this connection, the Committee recalls that identifying persons as members of an ethnic or racial group should be based upon self-identification by the person concerned, if there is no justification to the contrary.<sup>18</sup>

8.7 Furthermore, the Committee takes note of the petitioner's claim that the domestic courts gave too much weight to the circumstance that instead of securing employment, he requested compensation as a remedy in the court procedure. The Committee observes that the courts relied on the petitioner's choice in order to assume that he had never intended to work for the company, which presumption seems to have weakened his discrimination claim in the domestic court's assessment. The Committee underlines that the choice of a particular remedy may not negatively affect the examination of a discrimination claim, even in cases where the alleged victim of discrimination does not wish to work for the company concerned.

8.8 Furthermore, the Committee notes with concern the fact that the domestic courts established that the petitioner's decision not to bring his case before the Council on Preventing and Eliminating Discrimination and Ensuring Equality confirmed the absence of a "real situation of discrimination". In this respect, the Committee notes that the fact that the petitioner opted for a judicial avenue, which, in addition to declaratory relief, is capable of providing compensation, cannot put him in an adverse position.

8.9 Lastly, the Committee observes that it appears from the court documents that instead of requiring the respondent company to justify the differential treatment of the petitioner by specifying the exact reasons for his non-hiring, despite the advisory opinion provided by the Council on Preventing and Eliminating Discrimination and Ensuring Equality drawing the courts' attention to the need for reversal of the burden of proof in discrimination cases and giving some guidance as to the interpretation of the term "essential occupational requirements", the courts relied heavily on witness testimonies of other employees attesting to the non-discriminatory environment in which they carried out their daily duties. The Committee is concerned, however, that the information collected from persons who are of a different age, gender and ethnicity than the petitioner and who are employed in other positions does not guarantee that these persons were in an identical situation to the petitioner. It also disregards the possibility of intersectionality,<sup>19</sup> and of "ethnic hierarchies" in the labour market as have been demonstrated by comparative field experiments in Europe, and underestimates the occurrence of discriminatory treatment arising in "isolated" and specific circumstances, or even with mixed motives, not as a part of a systematic policy or treatment, especially in the absence of any specific explanation by the respondent company in relation to the petitioner's rejection. Finally, the Committee recalls that this approach does not resonate with an understanding of the challenges and prejudice that the Roma community continues to face in the State party, as established in the Committee's concluding

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<sup>16</sup> See, for example, *V.S. v. Slovakia* (CERD/C/88/D/56/2014), para. 7.4; *Er v. Denmark* (CERD/C/71/D/40/2007), para. 7.4; and *Laurent Gabre Gabroum v. France* (CERD/C/89/D/52/2012), para. 7.2.

<sup>17</sup> Art. 19 of Law No. 121 on equality.

<sup>18</sup> See the Committee's general recommendation No. 8 (1990).

<sup>19</sup> See the Committee's general recommendation No. 32 (2009), para. 7.



observations published in 2011 and 2017 on the Republic of Moldova as well as in numerous reports of other international and regional human rights bodies.<sup>20</sup>

8.10 The Committee reiterates that while a State party cannot reasonably be required to provide for the determination of rights under the Convention no matter how unmeritorious such claims may be, article 6 provides protection to alleged victims if their claims are arguable under the Convention. In view of the above considerations, the Committee finds in the current case that the petitioner presented such an arguable case, and that he was nonetheless left with a disproportionate burden to prove the respondent company's discriminatory intent. The Committee considers that even though the national legislation provides for the procedure of shifted burden of proof, the State party's response to the claims of racial discrimination was so ineffective that it failed to ensure appropriate protection and remedies, including appropriate satisfaction and reparation for the damage suffered, pursuant to its own laws and article 6 of the Convention. The Committee therefore concludes that the petitioner's rights under article 6 of the Convention have been violated.<sup>21</sup>

8.11 In view of the foregoing, the Committee does not find it necessary to examine separately the petitioner's claims in respect of article 5 (e) (i), and article 7 read in conjunction with article 2 (1) (d), of the Convention.

9. The Committee, acting pursuant to article 14 (7) (a) of the Convention, finds that the information before it, in the present case, discloses a violation of article 6 of the Convention by the State party.

10. The Committee recommends that the State party convey an apology to the petitioner and grant him adequate compensation for the damage caused by the above-mentioned violation of the Convention. The Committee also recommends that the State party fully enforce its anti-discrimination laws: (a) through the training of judges in anti-discrimination legislation, with a view to ensuring, inter alia, that the principle of shifting the burden of proof is fully observed; (b) through the provision of clear information about available domestic remedies in cases of racial discrimination; and (c) through strengthening of the monitoring of anti-discrimination labour standards. The State party is also requested to widely disseminate the present opinion of the Committee, including among judicial bodies, and to translate it into the official language of the State party.

11. The Committee requests the State party to provide, within 90 days, information on the measures taken to give effect to the Committee's opinion.

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<sup>20</sup> CERD/C/MDA/CO/10-11, paras. 20–21; CERD/C/MDA/CO/8-9, para. 15; E/C.12/MDA/CO/3, paras. 22–27; A/HRC/34/53/Add.2, paras. 105–107; and A/HRC/26/28/Add.2, para. 90 (a). See also European Commission against Racism and Intolerance, fourth report on the Republic of Moldova, adopted on 20 June 2013 and published on 15 October 2013, paras. 29–31, and fifth report on the Republic of Moldova, adopted on 20 June 2018 and published on 2 October 2018, paras. 83–84.

<sup>21</sup> See, for example, *Habassi v. Denmark* (case No. 10/1997), para. 9.3; *Er v. Denmark*, para. 7.4; and *V.S. v. Slovakia*, para. 7.4.