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## **Report on Needs Assessment in the area of Social Rights in the Republic of Moldova**

**Conducted under the Council of Europe Project  
“Framing cooperation for social rights development  
in the Republic of Moldova”**

**prepared by Olivier De Schutter\***

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## I. Introduction

After having joined the Council of Europe on 13 July 1995, the Republic of Moldova acceded to the European Convention on Human Rights on 24 July 1997, and acceded to the Revised European Social Charter (Hereinafter- European Social Charter) on 8 November 2001, accepting 63 of the 98 paragraphs of the Charter. It has neither signed, nor ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.<sup>1</sup>

The Committee of Ministers adopted the Council of Europe Action Plan for the Republic of Moldova 2017-2020 in February 2017. The Action Plan presents a comprehensive framework for cooperation to support key national reforms and ultimately bring the Republic of Moldova's legislative and regulatory frameworks, institutions and practice further in line with European standards. One of the priority areas for this cooperation is enhancing the respect of social rights in the Republic of Moldova. The project "Framing co-operation for social rights development in Moldova" was launched to assist the Republic of Moldova to enhance the respect of social rights in line with the European Social Charter and other relevant standards of the Council of Europe.

This report provides an assessment of the priority areas concerning social rights, on which the future cooperation between the Council of Europe and the Republic of Moldova should focus. An initial version of the report was prepared on the basis of desk research as well as a number of meetings organised online in August and September 2020, which the Council of Europe's office in Chisinau facilitated. A draft version of the needs assessment study was presented and discussed at a Stakeholder Conference, organised on 24 November 2020.

Among the stakeholders involved in the preparatory meetings and at the Stakeholder Conference were representatives of the Ministry of Health, Labour and Social Protection, of the Ministry of Justice and of the Ministry of Education, Culture and Research; members of the parliamentary committees for social protection, health and the family and for human rights; a spokesperson within the State Chancellery for the newly established National Council for Human Rights; representatives of the National Institute of Justice, of the Office of Ombudsperson, of the Council for the Prevention and Elimination of Discrimination and for Ensuring Equality; a number of non-governmental organisations, including HelpAge Moldova, Terre de Hommes Moldova, the Alliance of Organisations for Persons with Disabilities, the Alliance of NGOs active in the field of social protection of the family and the child, Caritas Moldova, and the Association for Child and Family Empowerment "ACE COPIII"; and representatives of international agencies in Moldova, including the International Organisation on Migration (IOM), the World Health Organisation (WHO), the United Nations Children's Fund (UNICEF) and the United Nations Development Programme (UNDP). The author is grateful to all the participants in these consultations, whose contributions greatly enriched the content of this report.

Moldova has made significant progress in reducing poverty: as reported by the United Nations Development Programme (UNDP) under SDG1 (No poverty), the absolute national poverty rate fell from its peak of 73% in 1999 to 9.6% in 2015, and the extreme poverty rate declined from 59.7% to 0.2% in the same period. Although the methodologies used for the assessment of poverty differ, this progress seems to have continued since: according to the Moldovan National Bureau of Statistics, the absolute poverty rate was 7.3% in 2018. However, considerable gaps remain: rural poverty almost five times higher than urban poverty; the subsistence agricultural activities in which much of the rural population is engaged (and the agricultural sector, which employs about 30% of the active population) are highly vulnerable to climate shocks; and certain groups of the population, such as the elderly and families with many children, are particularly affected by poverty. UNDP also note that "the overall perception of poverty among the population has increased in the last decade and the poverty rate is

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<sup>1</sup> E.T.S., n° 158. The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints was opened for signature on 9 November 1995 and is in force since 1 July 1998.

highly sensitive to small changes in the poverty line".<sup>2</sup> In other terms, the progress achieved, while significant, remains fragile, and it is unevenly spread across the population.

Moreover, a significant part of the reduction in poverty rates is due to the role of emigration and the sending of remittances from abroad, which is of course highly unsustainable and has negative impacts particularly on the development of children. As noted by the Commissioner for Human Rights of the Council of Europe Ms Dunja Mijatović following her visit to Moldova from 9 to 13 March 2020, poverty often "forced one or both parents to emigrate abroad in search of employment, leaving their children behind in the care of relatives, often the grandparents. While such families may be better off economically, the children who are left behind are more prone to suffering from emotional distress, frequently become victims of violence and abuse, and are at greater risk of using negative coping mechanisms".<sup>3</sup> Emigration also is a serious obstacle for the growth of the local economy. Therefore, the improvement of working conditions and wages, as well as of social protection, are essential, both for the building of human capital -- a major source of attractiveness to potential foreign investors --, and to stem the emigration flows.

Against this background, this needs assessment seeks to identify the key areas in which the Council of Europe standards in the area of social rights can contribute to strengthening the economy of Moldova and ensure it is placed on a more sustainable pathway. This assessment takes as its departure point the standards of the Council of Europe in the area of social rights, particularly those that stem from the European Social Charter, as well as standards from the United Nations human rights treaty bodies or Special Procedures, were relevant, as complementary sources. In addition to the consultations referred to above, it benefited from the document concerning the key challenges faced by the Republic of Moldova in the implementation of the European Social Charter, prepared on 22 January 2018 by Mr. Olivier De Schutter following a fact-finding mission conducted on 20-21 December 2017<sup>4</sup>, as well as from the report published in June 2020 by the Council of Europe Commissioner for Human Rights Ms Dunja Mijatović following her above-mentioned visit to Moldova from 9 to 13 March 2020.

## **II. Substantive areas of concern**

This report identifies the key issues raised concerning the implementation of the European Social Charter and other Council of Europe standards in the area of social rights in the Republic of Moldova. For ease of exposition, these issues have been listed in accordance with the approach following for reporting purposes under the European Social Charter, which divides up the rights of the Charter into distinct "groups" relating, respectively, to Employment, training and equal opportunities (group 1), Health, social security and social protection (group 2), Labour rights (group 3), and Children, families and migrants (group 4).

The report does not offer to cover the full range of the rights of the European Social Charter. Rather, it highlights the areas in which reform is imminent or most urgent, recalling the standards applicable and the challenges that the Republic of Moldova faces in each of the areas identified.

### **1. Employment, training and equal opportunities**

Employment, training and equal opportunities (thematic group 1 under the European Social Charter) covers: the right to work (Article 1), the right to vocational guidance (Article 9), the right to vocational training (Article 10), the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15), the right to engage in a gainful occupation in the territory of other States Parties (Article 18), the right of men and women to equal opportunities (Article

<sup>2</sup> <https://www.md.undp.org/content/moldova/en/home/sustainable-development-goals/goal-1-no-poverty.html>

<sup>3</sup> CommDH(2020)10, 25 June 2020, para. 27, p. 12.

<sup>4</sup> This document shall be referred to hereafter as "Key Challenges".

20), the right to protection in cases of termination of employment (Article 24), the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

## Article 1 - Right to work

### Paragraph 2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

The most important piece of legislation prohibiting discrimination in the Republic of Moldova is Law No. 121 of 25 May 2012 on Ensuring Equality.<sup>5</sup> This law is in many regards progressive. It defines and prohibits both direct and indirect discrimination (Article 2). It provides for “positive measures” to be taken to protect persons at a particular disadvantage (Article 1(1), Article 5(a)). It identifies as part of the worst forms of discrimination based on two or more protected grounds (Article 4). Certain issues remain to be addressed, however.

**a) Protection from discrimination on grounds of sexual orientation.** Law No. 121 aims to combat discrimination in all spheres of life on grounds of race, colour, nationality, ethnic origin, language, religion or belief, sex, age, disability, opinion, political affiliation, or any other similar ground (“în sferele politică, economică, socială, culturală și alte sfere ale vieții, fără deosebire de rasă, culoare, naționalitate, origine etnică, limbă, religie sau convingeri, sex, vîrstă, dizabilitate, opinie, apartenență politică sau orice alt criteriu similar”) (Article 1(1)). However, only in Article 7(1) of the Law is there an explicit reference to the prohibition of discrimination on the ground of sexual orientation, a reference which was obviously intended to ensure compliance with the EU Employment Equality Directive.<sup>6</sup> Although the Council on the Prevention and Elimination of Discrimination and Ensuring Equality (hereinafter-Equality Council) has held that sexual orientation is a protected characteristic within the meaning of Article 1(1) of the Law No. 121 on Ensuring Equality,<sup>7</sup> it is unclear whether the other institutions, particularly courts have followed this interpretation. Clearly, it would have been preferable to include a reference to sexual orientation in Article 1(1) of Law No. 121. Pending such an amendment of the legislation however, courts should rely on the current wording (which provides a *non-limitative* list of prohibited grounds of discrimination allowing sexual orientation to be included) in order to interpret this provision in accordance with Council of Europe standards.<sup>8</sup>

**b) Protection of the Roma from discrimination.** Concerns are expressed also as regards the situation of the Roma in the Republic of Moldova. The Equality Council refers to the persistence of stereotypes and discriminatory attitudes of the majority of population towards Roma people, affecting access to employment, to education, to healthcare, and to goods and services available to the public.<sup>9</sup> Other sources notes that despite the operation of an Action Plan for supporting Roma Population in the Republic of Moldova for 2011-2015 (Roma Action Plan), by 2015 “only 70 of the 1,100 Roma registered with the National Employment Agency were employed”.<sup>10</sup> In part because the Roma are “disproportionately likely to be employed as unskilled or informal workers, ... the average monthly

<sup>5</sup> Articles 8-10 of the Labour Code (as amended by Law No. 168 of 9 July 2010) also are relevant to the prohibition of discrimination in employment. In this regard, the European Committee of Social Rights welcomed the fact that “skin colour’ and ‘HIV/AIDS infection’ have been added to the list of prohibited grounds of discrimination enumerated in Article 8 of the amended Labour Code” and that “Article 10(2)(f1), (f2) and (f4) imposes obligations on employers to ensure equal opportunity and treatment of all employees without discrimination, to apply the same criteria to assess each employee’s work and to ensure equal conditions for men and women relating to work and family obligations” (Conclusions 2016).

<sup>6</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303 of 2.12.2000.

<sup>7</sup> Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 028/13 of 21 January 2014, available at: <http://www.egalitate.md/media/files/files/>

<sup>8</sup> This is also the conclusion of the study *Assessment of Law no. 298 on the activity of the Council for Prevention and Elimination of Discrimination and Ensuring Equality in Moldova*, by Niall Crowley and Ivana Roagna (July 2016), p. 6.

<sup>9</sup> Decision of 13.10.2014 on the case no. 159/2014 ; Decision of 13.02.2015 on the case no. 190/2014; Decision of 28.09.2015 on the case no. 293/15.

<sup>10</sup> Equal Rights Trust, *Suggestions for the list of issues to be adopted by the Committee on Economic, Social and Cultural Rights at its 60<sup>th</sup> session (pre-sessional working group) in relation to the third periodic report submitted by Moldova (27 Jan. 2017)*, citing National Employment Agency, *Activity Report for 2015, 2016*, p. 16.

income of a Roma family ... is about 1,000 lei (approx. €45), 40% less than the average income of a non-Roma household".<sup>11</sup> The Action Plan for supporting the Roma people for 2016-2020 therefore deserves to be given a high degree of priority. And it is welcome that this priority is listed in the Third National Human Rights Action Plan (2018-2022) (NHRAP), under Objective II: To prevent and combat discrimination of Roma people (part of Area of intervention 15: Rights of people belonging to national, ethnic, religious and language minorities).<sup>12</sup>

**c) Access of foreign nationals to positions in the civil service.** In 2016, the European Committee of Social Rights found that Moldova was not in conformity with Article 1 para. 2 (non-discrimination in access to employment as a component of the right to work) of the Charter insofar as it imposes a total ban for foreign nationals to access civil servants posts, rather than limiting this prohibition to those posts/positions only which are inherently connected with the protection of the public interest or national security and involve the exercise of public authority.<sup>13</sup> Indeed, the Committee consistently has held the view that it follows from Article 1, para. 2 of the Charter, that, "while it is possible for states to make foreign nationals' access to employment on their territory subject to possession of a work permit, they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G; restrictions on the rights guaranteed by the Charter are admitted only if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority".

Law No. 158 on State Functions and the Status of Public Servants, adopted on 4 July 2008, was amended on a number of occasions, in particular by Law No. 167 of 11 July 2012 and by Law No. 268 of 29 November 2012. Further improvements should be made however, since this legislation imposes a nationality requirement for all public servants (whether in the central or in the local public administration), without distinguishing between functions that involve the exercise of public authority and other functions.

**d) Protection from discrimination in employment for older persons or pensioners.** When the 2003 Labour Code was amended in 2017<sup>14</sup>, one of the amendments consisted in allowing the dismissal, without any further justification having to be provided, of employees having reached pensionable age (article 86(1)(y)). The Council for Equality considers this to constitute a discrimination on grounds of age. This group of the population is also disadvantaged by the rule that requires employees seeking to benefit from compensation following the winding up of a company that they register within 14 days with the territorial employment agency: indeed, employees having reached pensionable age cannot register with such an agency and therefore are denied the protection other employees, who are otherwise in a similar situation, enjoy.

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<sup>11</sup> Equal Rights Trust, *Suggestions for the list of issues to be adopted by the Committee on Economic, Social and Cultural Rights at its 60<sup>th</sup> session (pre-sessional working group) in relation to the third periodic report submitted by Moldova* (27 Jan. 2017), citing United Nations in Moldova, *Roma in the Republic of Moldova: In Communities Inhabited Mainly by Roma*, 2013, p. 36, and UN Women, United Nations Development Programme, and Office of the High Commissioner for Human Rights, *Study on the Situation of the Romani Women and Girls in the Republic of Moldova*, 2014, p. 37.

<sup>12</sup> The result indicators under the Area of intervention are the following:

1. Reduce social distance towards the representatives of the Roma population
2. Increasing the participation rate of Roma children, especially Roma girls, at all levels of the education system
3. Increasing the employment rate among the Roma population, especially Roma girls, including in the civil service
4. Reducing the rate of Roma people who do not have identity documents
5. Reducing the number of early marriages among Roma children, especially Roma girls
6. Increasing the consultation rate of draft normative acts, at central and local level, with the Roma population
7. Increasing the employment rate of Community mediators in eligible localities.

<sup>13</sup> Conclusions 2016 (2016/def/MDA/1/2/FR).

<sup>14</sup> Law No. 157 dated 20 July 2017 amending and supplementing the Moldovan Labour Code No. 154-XV of 28 March 2003, Monitorul Oficial no. 301-315 (6224-6238), 18.8.2017.

## **Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community**

### **Paragraph 2 - Employment of persons with disabilities**

The most important piece of legislation ensuring access to employment to persons with disabilities is Law No. 60 of 30 March 2012 on the social integration of persons with disabilities. The law introduces new concepts in Moldovan legislation such as "reasonable accommodation", "universal design", "accessibility"; it defines these notions as well as "disability" on the basis on the definitions from the Convention on the Rights of Persons with Disabilities, which the Republic of Moldova ratified by Law no. 166 of 9 July 2010.

The European Committee of Social Rights concluded in 2016, however, that "the situation in the Republic of Moldova is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that persons with disabilities are guaranteed effective equal access to employment".<sup>15</sup> The European Committee of Social Rights had two main concerns. One concern was that, at the time when Moldova was assessed, the duty of employers to make suitable adjustments to the working conditions of persons with disabilities was unclear (Conclusions 2016). Law No. 60 of 25 May 2012 did however introduce the notion of reasonable accommodation/adjustment (*adaptare rezonabila*) (defined in Article 2), and it defines prohibited discrimination in Article 8(6) as "any distinction, exclusion, restriction or preference, *and the refusal to create conditions for reasonable adaptation/adjustment*". (emphasis added).<sup>16</sup>

Indeed, since the latest assessment by the European Committee of Social Rights, Moldova has adopted Law no. 105 of 14 June 2018 on the promotion of employment and unemployment insurance. This new piece of legislation introduces the notion of *adaptation of the workplace* (defined as "all actions taken by the employer to facilitate the exercise of the right to work and increase the workplace performance of the disabled person by equipping them with equipment, devices and access technologies, taking into account the individual needs of that person"), and of *assisted employment* ("intervention method that supports the persons specified in art. 23 para. (3) [of the Law, which includes persons with disabilities] in order to obtain and maintain a paid job on the labor market"). This latter definition was even more recently amended by article 414 of Law no. 137 from 16 July 2020<sup>17</sup>, which now defines *assisted employment* as "service provided free of charge to the persons specified in art. 23 para. (3) lit. c) [persons with disabilities] by private providers of assisted employment services in order to ensure access, obtaining and maintaining a paid job on the labor market". This new definition shall enter into force on 7 February 2021.

Article 36 of the Law no. 105 now provides that employers who recruit "for an indefinite or determined period, with a duration of at least 18 months, unemployed persons from the categories of persons mentioned in art. 23 para. (3) lit. c), e) –j) [of the Law, which includes persons with disabilities] [...], receives monthly subsidies in the amount of 30% of the average monthly salary per economy for the previous year, for a period of 6 months, for each unemployed employee. The subsidy is granted in order to partially compensate the salary of the unemployed employee." The subsidy is granted by the National Agency for Employment. It is conditional, however, upon the employer keeping the employee at its service for a period of at least 12 months from the end of the period in which he/she received the subsidy (art. 36(3)). Article 38(2), as amended in 2020, also provides that the employer shall be compensated in part for the costs necessary to create or adapt the job. The compensation is set at 50% of the expenses borne by the employer (for employment of people with medium disabilities), or 75% (for the

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<sup>15</sup> Indeed, non-governmental sources have expressed the view that Law No. 60 "has not yet resulted in any major reduction in the discrimination faced by people with disabilities in Moldova" (Equal Rights Trust, *From Words to Deeds: Addressing Discrimination and Inequality in Moldova* (June 2016), p. 270).

<sup>16</sup> Article 2 of Law No. 121 of 25 May 2012 on Ensuring Equality also defines reasonable accommodation. Rather surprisingly since the two laws were adopted simultaneously, the definitions of reasonable accommodation are not identical; the definition provided in Law No. 121 is in fact preferable, as it refers to reasonable accommodation as individualized measures.

<sup>17</sup> *Official Gazette* 199-204 of 7.8.2020 (art. 414).

employment of people with severe and severe disabilities). The amount of the subsidy, however, may not exceed 10 average monthly salaries for each job created or adapted, which amounts to a ceiling of 79,530 lei or approximately 4,000 euros.

Another concern of the European Committee of Social Rights was that, although Article 34(4) of Law No. 60 imposes an obligation on employers with at least 20 staff to create or reserve 5% of jobs for persons with disabilities, implementation is weak. According to certain non-governmental sources, too few awareness-raising measures have been taken towards employers, so that this requirement is largely ignored; moreover, "there is a no indication of how this quota will be implemented nor is there sanction for breach".<sup>18</sup> Although fines in fact can in principle be imposed on employers which do not comply (amounting to 12,000 to 15,000 lei), the view that this provision remains poorly implemented in practice is widely shared. Indeed, the employment rate of persons with disabilities remain half that of the active population in general, in part because persons with disabilities are legally entitled to two months of paid annual leave and a six-hour workday.<sup>19</sup> Some organisations representing persons with disabilities suggested that in order to speed up the professional integration of persons with disabilities, a more appropriate solution would be to provide for an individualised approach, based on the specific needs of each individual, rather than to maintain such advantages, which may increase the costs to the employer of complying with this requirement.

## **Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community**

### **Paragraph 3 - Full social integration and participation in the life of the community**

**Inclusive education and institutionalisation.** Further progress should be made in order to ensure that all children with disabilities have access to inclusive education in the mainstream educational system. Although improvements have been made in recent years, the UN Committee on the Elimination of Discrimination against Women (CEDAW committee) reiterated in 2020 its concern about "the limited number of women and girls with disabilities in mainstream and inclusive education, owing to the lack of accessible school buildings and facilities, as well as the lack of training on inclusive education for teachers and staff in schools".<sup>20</sup> Following her visit to Moldova from 9 to 13 March 2020, the Commissioner for Human Rights of the Council of Europe Ms Dunja Mijatović also noted that access for children with physical or sensory disabilities to mainstream schools still requires improvement.<sup>21</sup>

Indeed, in addition to insufficient access to inclusive education, children with disabilities routinely are institutionalised, due to a lack of support to community-based solutions. The Commissioner for Human Rights encouraged the Moldovan authorities to "strengthen their efforts at moving away from the practice of institutionalisation of children, including on the basis of poverty or disability, and to this end, to expand alternative care models in family-type settings and allocate more resources and support to guardians and foster care providers".<sup>22</sup> More generally, while welcoming "the start of the de-institutionalisation of persons with intellectual or psychosocial disabilities", she stressed "the need to further expand and diversify community-based services to support these persons' independent living".<sup>23</sup>

**Reasonable accommodation.** The Commissioner for Human Rights of the Council of Europe also concluded that the accessibility of public spaces, transport and services should be further improved, and that universal design and reasonable accommodation should be better adhered to and monitored in all

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<sup>18</sup> Equal Rights Trust, *Suggestions for the list of issues to be adopted by the Committee on Economic, Social and Cultural Rights at its 60<sup>th</sup> session (pre-sessional working group) in relation to the third periodic report submitted by Moldova* (27 Jan. 2017).

<sup>19</sup> CommDH(2020)10, 25 June 2020, para. 54, p. 18.

<sup>20</sup> CEDAW/C/MDA/CO/6, 10 March 2020, para. 30, c).

<sup>21</sup> CommDH(2020)10, 25 June 2020, p. 5.

<sup>22</sup> CommDH(2020)10, 25 June 2020, p. 5.

<sup>23</sup> Id., p. 6.

policies and areas of activity.<sup>24</sup> Indeed, this is closely linked to the question of de-institutionalisation, since the lack of effective enforcement of the legal duties imposed on construction companies to construct buildings with access for persons with disabilities, and those of transportation companies to equip their vehicles to meet the needs of persons with disabilities explains, in addition to the lack of community services, the lack of sufficient progress towards de-institutionalisation and inclusion of persons with disabilities in community life.<sup>25</sup>

## **Article 20 - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex**

Law No. 5 of 9 February 2006 on equal opportunities for men and women<sup>26</sup> prohibits gender discrimination and includes special provisions to promote equality, and reiterates the principle according to which "In case of a discrepancy between the provisions of this Law and those of international treaties to which the Republic of Moldova is a party, the international treaties shall prevail" (Art. 4(2)), a principle that is already stipulated in the Constitution.

However, although Article 24 of Law No. 5 states that persons victims of discrimination on grounds of sex have a right to file a civil claim to obtain reparation against the person or organisation that has committed the discrimination (it follows from Article 3 that this covers both natural and legal persons, in both the private and the public sector), non-governmental sources having assessed the effectiveness of the legislation have concluded that it remains "primarily a statement of principle, limited to imposing duties on public bodies to make 'equal opportunities' decisions and policies"<sup>27</sup> and that the legislation remains incomplete as regards "enforcement mechanisms or remedies for breach of duty".<sup>28</sup> Indeed, certain provisions of Law No. 5 of 9 February 2006 on equal opportunities for men and women suggest that further action (including legislative and regulatory action) should be taken by Parliament and Government in order to implement the principle of equal treatment between women and men.<sup>29</sup> This may create a source of confusion as to the immediate and direct effect of Law No. 5 on equal opportunities for men and women and as to the ability for victims to rely on this law to seek reparation for any instance of discrimination.

In Conclusions it adopted in 2016, the European Committee of Social Rights had also found that the legal framework in the Republic of Moldova was not in conformity with Article 20 of the European Social Charter. Article 248 of the Labour Code, at the material time,<sup>30</sup> prohibited the employment of women in arduous and underground work except for work in health and social services that does not require physical effort; the list of employment positions considered to be arduous and from which women were excluded was to be drawn up by the Government in consultation with employers' organisations and trade unions. This, the Committee found to be "incompatible with the principle of equality laid down in Article 20 of the Charter". Amendments made to the Labour Code in 2017 (in force since 18 August 2017)<sup>31</sup> sought to address this concern. The new version of Article 248 of the Labour Code reads:

The employment of pregnant women, of women who gave birth recently and of lactating women, as well as the employment of women in underground work in mines, and in any other activities

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<sup>24</sup> CommDH(2020)10, 25 June 2020, p. 6.

<sup>25</sup> Id., para. 48, p. 17.

<sup>26</sup> *Official Monitor of the Republic of Moldova No. 47-50/200 of 24.03.2006.*

<sup>27</sup> Equal Rights Trust, *From Words to Deeds: Addressing Discrimination and Inequality in Moldova*, p.257.

<sup>28</sup> Equal Rights Trust, *Suggestions for the list of issues to be adopted by the Committee on Economic, Social and Cultural Rights at its 60<sup>th</sup> session (pre-sessional working group) in relation to the third periodic report submitted by Moldova (27 Jan. 2017).*

<sup>29</sup> See Articles 16 and 25.

<sup>30</sup> Labour Code of the Republic of Moldova (Law No. 154-XV of 28 March 2003), Monitorul Oficial no. 159-162, art. 648.

<sup>31</sup> Law No. 157 dated 20 July 2017 amending and supplementing the Moldovan Labour Code No. 154-XV of 28 March 2003, Monitorul Oficial no. 301-315 (6224-6238), 18.8.2017.



that pose a risk to their safety or health or that may have an impact on the pregnancy or breastfeeding, is subject to minimum requirements approved by the Government.<sup>32</sup>

However, Article 248 of the Labour Code still prohibits certain categories of women from working in mining and other industries that pose a risk to their safety or health, an issue about which the UN Committee on the Elimination of Discrimination against Women expressed its concern, leading it to recommend (in Concluding Observations adopted in March 2020) repealing this provision and "to remove restrictions on the employment of certain categories of women in the listed professions, shift to conducting individual assessments and improve the working conditions in all industries".<sup>33</sup> Although the list of prohibited professions established in 1993 by governmental decree n° 624 was repealed in October 2020, this would not seem to ensure full compliance with the requirement of equal treatment, since the current formulation of Article 248 of the Labour Code still prohibits the employment of women in "activities that pose a risk to their safety or health or that may have an impact on the pregnancy or breastfeeding".

Concerns were also expressed during the consultations held in preparation of this needs assessment by Article 251 of the Labour Code, insofar as this provision includes certain safeguards benefiting women with children up to the age of 4, for instance in cases of collective dismissals or of insolvency of the employer. While this provision is motivated by the need to safeguard the best interests of the child, the fact that such safeguards benefit women exclusively, and not men, reinforces stereotypes about gender roles.

More generally, the CEDAW committee expressed its concern at the persistence in the Republic of Moldova of vertical and horizontal occupational segregation and of a gender pay gap, notwithstanding the principle of equal pay for work of equal value in national legislation, and it recommended improving the effective enforcement of the principle of equal pay for work of equal value, in order to close the gender pay gap, "by regularly reviewing wages in all sectors, applying gender-sensitive analytical job classification and evaluation methods, conducting regular labour inspections and conducting regular pay surveys".<sup>34</sup>

## **Article 20 - Right of men and women to equal opportunities**

**Equality between women and men.** Law No. 5 of 9 February 2006 on equal opportunities for men and women could also be improved on another point, which concerns its definition of discrimination. Specifically, on the basis of article 1 of the International Convention on the Elimination of All Forms of Discrimination against Women,<sup>35</sup> the CEDAW committee recommended that this law should be amended "to include a comprehensive definition of discrimination against women that covers, in addition to direct and indirect discrimination, discrimination in the public and private spheres and intersecting forms of discrimination, ...".<sup>36</sup>

## **2. Health, social security and social protection**

Health, social security and social protection (thematic group 2 under the European Social Charter) includes the right to safe and healthy working conditions (Article 3), the right to protection of health (Article 11), the right to social security (Article 12), the right to social and medical assistance (Article

<sup>32</sup> This is an unofficial translation. The original language reads: "Este interzisă utilizarea muncii femeilor gravide, a femeilor care au născut de curînd și a celor care alăptează la lucrări subterane în mine, precum și în orice alte activități care prezintă riscuri pentru securitatea sau sănătatea lor ori care pot avea repercusiuni asupra sarcinii sau alăptării, conform cerințelor minime aprobate de Guvern".

<sup>33</sup> CEDAW/C/MDA/CO/6, 10 March 2020, para. 32, b), and para. 33, b).

<sup>34</sup> CEDAW/C/MDA/CO/6, 10 March 2020, para. 33, a).

<sup>35</sup> This article defines the term "discrimination against women" as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".

<sup>36</sup> CEDAW/C/MDA/CO/6, 10 March 2020, para. 11.

13), the right to benefit from social welfare services (Article 14), Article 23 or Article 4 of the of the Additional Protocol (the right of elderly persons to social protection (Article 23 or Article 4 of the Additional Protocol) and the right to protection against poverty and social exclusion (Article 30).

### **Article 11 - The right to the protection of health**

Two major issues arise under this provision of the European Social Charter. First, out-of-pocket informal payments appear to be relatively common across the health care system, thus making it more difficult for low-income families to have access, under conditions of non-discrimination, to healthcare services. WHO data show that in Moldova, approximately 3.5% of households are already unable to meet their basic needs before paying for healthcare, and another 3.5% are no longer able to afford to meet their basic needs after out-of-pocket expenses for healthcare: in other terms health-related out-of-pocket payments result in doubling the proportion of households falling below the poverty line.<sup>37</sup> Moreover, in 2016 (the latest year for which data were available), no less than 17% of households in Moldova faced catastrophic healthcare spending -- spending, in other terms, in excess of 40% of the revenue of the household left after deduction of expenses to meet basic needs.<sup>38</sup> Informal payments or out-of-pocket payments made to obtain faster access or better quality of care are part of this general problem, although most of out-of-pocket payments seem to be spent on outpatient medicines.

Recent reviews confirm the persistence of this concern. Following her visit to Moldova in March 2020, the Commissioner for Human Rights of the Council of Europe noted that the health care system "has been facing serious challenges related to public funding, access to quality primary care, in particular in rural areas, and the outflow of qualified medical personnel. Substantial out-of-pocket payments and demands for informal payments are important impediments in access to health services, in particular for people with low income, the elderly, women and persons with disabilities".<sup>39</sup> She specifically noted that "informal and out-of-pocket payments are ... common and may cause poor families to abstain from seeking medical assistance" and recommended that budgetary allocations to the health care system be gradually increased and that special attention be paid to "reducing disparities in access to quality medical care for people living in rural areas and members of vulnerable groups".<sup>40</sup> Since the visit took place, the scarcity of the medical personnel has in fact worsened, since the SARS-CoV-2 (COVID-19) pandemic led some of the doctors who were within the age group of risk to leave the system.

A second issue concerns access to mental health care. Despite the decentralisation of services since 2018 to better cover rural areas through a network of mental health care professionals and efforts to strengthen community-based solutions, the Council of Europe Commissioner for Human Rights still notes that "mental health care remains largely institutionalised with few alternative care options in the community".<sup>41</sup> This is largely attributable to the lack of specialised personnel health care professionals, many of which have migrated from Moldova, and to the underinvestment in the social care sector.

### **3. Labour rights (group 3) covers:**

Labour rights (thematic group 3 under the European Social Charter) covers: the right to just conditions of work (Article 2), the right to a fair remuneration (Article 4), the right to organise (Article 5), the right to bargain collectively (Article 6), the right to information and consultation (Article 21), the right to take part in the determination and improvement of the working conditions and working environment (Article 22), the right to dignity at work (Article 26), the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28), and the right to information and consultation in collective redundancy procedures (Article 29).

<sup>37</sup> World Health Organisation Regional Office for Europe, *Can people afford to pay for health care? New evidence on financial protection in Europe* (2019), p. 30 (figure 4).

<sup>38</sup> *Id.*, p. 31 (figure 5).

<sup>39</sup> CommDH(2020)10, 25 June 2020, p. 7.

<sup>40</sup> *Id.*, para. 26, p. 12.

<sup>41</sup> CommDH(2020)10, 25 June 2020, para. 51, p. 17.

## **Article 2 - Right to just conditions of work**

### **Paragraph 2 - Public holidays with pay**

Under this provision of the European Social Charter, the State Parties to the Charter are required to provide for paid public holidays. In case when employees are required to work on a public holiday an increased remuneration in addition to the base salary, as well as additional compensatory time off should be provided.

In 2019, the European Committee on Social Rights concluded that the situation in Moldova was not in conformity with these provisions of the European Social Charter. Indeed, Article 158 of the Labour Code provided that employees paid on a piecework, hourly or daily basis must receive at least double pay when they work on a public holiday, and that monthly paid employees must receive at least in the amount of time unit salary or one-day pay in addition to the base salary, if the work on the non-working day was performed within the limit of the monthly working time norm, and at least the double amount of salary per unit of time or one-day pay in addition to the base salary, if the work was done over the monthly norm. However, according to Article 158.2, instead of the remuneration due for a work on a non-working day, at a written request of the employee, the employer may give him/her a rest day, which will not be paid.

## **Article 2 - Right to just conditions of work**

### **Paragraph 7 - Night work**

Article 2§7 of the Charter requires regular medical examinations, including a check-up prior to assignment to night work.<sup>42</sup> In its 2018 Conclusions, the European Committee of Social Rights found that the situation in the Republic of Moldova was not in conformity with Article 2§7 of the Charter on the ground that legislation made no provision for a medical check-up before being assigned to night work.<sup>43</sup> This lacuna has been filled, however, following the new amendments to the Labour code (which entered into force on 31 August 2020): article 103(3) now provides that "employees to be transferred to permanent night work, prior to transfer, shall undergo a medical examination at the expense of the employer".

## **Article 4 - Right to a fair remuneration**

### **Paragraph 3 - Non-discrimination between women and men with respect to remuneration**

Under Article 4§3 of the European Social Charter, domestic law must provide for appropriate and effective remedies in the event of alleged wage discrimination. Employees who claim that they have suffered discrimination must be able to take their case to court. Domestic law should provide for a shift of the burden of proof in favour of the plaintiff in discrimination cases, and anyone who suffers wage discrimination on grounds of gender must be entitled to adequate compensation, that is, compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender: any ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently deterrent is proscribed.

In its 2018 Conclusions,<sup>44</sup> the Committee concludes that the situation in Moldova is not in conformity with Article 4§3 of the Charter on the ground that, despite the existence in the Labour Code, in Law No.121 of 25 May 2012 on Ensuring Equality and in Law No. 5 of February 9, 2006 on Equal Opportunities for Women and Men of provisions guaranteeing gender equality with respect to wages

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<sup>42</sup> Article 103 of the former Labour Code defined night work as work performed between 10 p.m. and 6 a.m and regulates the duration of the night work.

<sup>43</sup> 2018/def/MDA/2/7/EN.

<sup>44</sup> 2018/def/MDA/4/3/EN.

(respectively article 7(2)(d) of Law No.121 (2012) and article 11 of Law No. 5 (2006)), there have been no cases concerning pay discrimination before national courts: indeed, this suggests that the judicial enforcement of the principle of fair remuneration is not guaranteed in practice. The Committee also found that, since Moldova could not provide specific information on the pay comparisons in private sector, it is not demonstrated that pay comparisons across companies in the private sector are possible and therefore the situation is not in conformity with the Charter.

#### **Article 4 - Right to a fair remuneration**

##### **Paragraph 4 - Reasonable notice of termination of employment**

Employees dismissed due to a health problem or insufficient qualifications (Article 86 (1) (d) and (e) of the Labour Code) or due to reinstatement of the previous employee following a court's decision (Article 82j<sup>1</sup>)), are entitled to a severance allowance, which amounts to two week's average wage. The European Committee of Social Rights considered that the situation in the Republic of Moldova is not in conformity with Article 4§4 of the Charter because the severance pay of two weeks' wage is not reasonable for employees with more than six months of service.<sup>45</sup>

#### **Article 4 - Right to a fair remuneration**

##### **Paragraph 5 - Limits to deduction from wages**

In its Conclusions 2018, the European Committee of Social Rights held that the situation in Moldova was not in conformity with Article 4§5 on the ground that, after all authorised deductions, the wage of workers with the lowest pay did not allow them to provide for themselves and their dependents. The Committee noted that, while Article 149 of the Labour Code sets limits to wage deductions, this provision still allowed situations to persist in which workers receive only 70% or 50% of the minimum wage, an amount which did not allow them to provide for themselves and their dependents.<sup>46</sup> Therefore, as they are regulated by Articles 147-150 of the Labour Code, the allowed deductions to wages are excessive. Moreover, the Committee was concerned that the measures preventing workers from waiving their right to limited deductions may be insufficient.<sup>47</sup> According to information received from the Ministry of Health, Labour and Social Protection, these concerns are currently considered in the preparation of amendments to the Labour Code, which should be tabled before the end of 2020.

#### **Article 5 - Right to organise**

The right to organise includes the right to form trade unions and employer associations, the freedom to join or not join a trade union, and trade union activities. In its 2018 Conclusions, the European Committee of Social Rights concluded that the situation in Moldova is not in conformity with Article 5 of the Charter on two grounds.<sup>48</sup> First, according to the ILO Committee on Freedom of Association, alleged acts of interference by the Government and employers in the trade unions' internal affairs were not effectively investigated, and despite the increase in the level of fines following an amendment to the Contravention Code in 2016, the fines and other types of sanctions so as to ensure effective protection against acts of anti-union discrimination and interference remain insufficient. Secondly, the right of the police and of members of the armed forces to organise are not recognized.

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<sup>45</sup> 2018/def/MDA/4/4/EN.

<sup>46</sup> It should be noted however that certain wage deductions are only allowed to ensure the payment of alimony, and therefore are in the interest of the child. Nevertheless, this would not seem to justify deductions that lead to workers being in poverty.

<sup>47</sup> 2018/def/MDA/4/5/EN.

<sup>48</sup> 2018/def/MDA/5/EN.

During the consultations that informed the preparation of this draft assessment needs report, however, representatives from the Ministry of Health, Labour and Social Protection questioned the accuracy of both of these findings. It should be noted however that, under Government Decision no. 389 of 25 April 2018 amending the Nomenclature of Units, Sectors and Services whose employees cannot take part in strike.<sup>49</sup>, discussed further below, all members of the armed forces as well as members of the state protection and guard service who are "protection officers (persons with positions of public dignity and civil servants with special status)" are prohibited from striking.

## **Article 6 - Right to bargain collectively**

### **Paragraph 3 - Conciliation and arbitration**

According to the European Committee on Social Rights, any form of recourse to arbitration constitutes a violation of Article 6§3 where domestic law allows one of the parties to defer the dispute to arbitration without the consent of the other party or allows the Government or any other authority to defer the dispute to arbitration without the consent of one party or both. In its 2018 Conclusions,<sup>50</sup> the Committee concludes on that basis that the situation in Moldova is not in conformity with Article 6§3 of the Charter since compulsory arbitration is permitted in circumstances which go beyond the limits set by Article G of the Charter. Indeed, the Labour Code provides that if the parties in conflict do not reach an agreement or disagree with the decision of the Conciliation Commission, either of them is entitled to submit, within 10 working days from the date of the decision or receipt of the respective information (Art. 359(8) and (9)), a request for settlement of the conflict by the courts.

## **Article 6 - Right to bargain collectively**

### **Paragraph 4 - Collective action**

The European Committee on Social Rights considers that the restrictions to the right to strike should not go beyond the restrictions allowed for by Article G of the Charter.<sup>51</sup> Whereas the Committee considers that prohibiting strikes in sectors which are essential to the community may serve a legitimate purpose "since strikes in these sectors could pose a threat to public interest, national security and/or public health", it has consistently stated that a complete ban on strikes even in essential sectors would be disproportionate, where the introduction of a minimum service requirement in such sectors might suffice to protect the essential interests at stake.<sup>52</sup>

The 2003 Labour Code, as amended in 2008, provides the following<sup>53</sup> :

#### Article 369 Limitation of participation in the strike

- (1) The strike is prohibited during the period of natural calamities, outbursts of epidemics, pandemics, during the period of setting up of state of emergency or war.
- (2) Cannot participate in the strike:
  - a) medical-sanitary personnel from hospitals and services of urgent medical assistance;
  - b) employees running the systems of water and energy supply;
  - c) employees running the telecommunication system;
  - d) employees of the services running the airplane traffic;
  - e) officials in the central public authorities;

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<sup>49</sup> Official Monitor No. 133-141 art. 431, 27 April 2018.

<sup>50</sup> 2018/def/MDA/6/3/EN.

<sup>51</sup> Conclusions I (1969), Statement of Interpretation on Article 6§4, *Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" and European Trade Union Confederation (CES) v. Bulgaria*, Complaint No. 32/2005, Decision on the merits of 16 October 2006, §24.

<sup>52</sup> Conclusions XVII-1 (2004), Czech Republic.

<sup>53</sup> English version adapted from the translation provided by the International Labour Organisation.

- f) employees of the bodies that provide the public order, law enforcement order and state security, the court judges, employees from military entities, organizations or institutions of Armed Forces;
  - g) employees working in entities with continuous flow;
  - h) employees working in entities manufacturing goods for the needs related to country defense.
- (3) The classified list of entities, sectors and services, which employees cannot participate in the strike according to paragraph (2), is approved by the Government after consultation with employers' organisations and trade unions.
- (4) In case of strike prohibition according to the art (1) and (2), the collective labour conflicts shall be settled by the bodies of labour jurisdiction.

These are far-reaching exceptions to the right to strike, that seem to go beyond the range of prohibitions that the European Committee of Social Rights would deem acceptable under Article 6 para. 4 of the Charter. The reference to "officials in the central public authorities", to "employees working in entities with continuous flow", and to "employees working in entities manufacturing goods for the needs related to country defense", seem particularly overbroad, in the absence of any reference to any minimum service requirement. Government Decision no. 656 of 11 June 2004 on the approval of the Nomenclature of Units, Sectors and Services whose employees cannot take part in strike, which as adopted in accordance with Article 369(3) of the Labour Code, appears to adopt at times a general wording (for instance, prohibiting the participation in strikes of all employees of the Parliament, the State Chancellery and the Presidency, rather than limiting such prohibition to officials from central public authorities only, or imposing prohibitions to strike beyond employees which, within the General Prosecutor's Office, the Intelligence and Security Service, the Department of Penitentiary Institutions, the Department of Emergency Situations, the State Protection and Guard Service, have as functional competencies to ensure public order, rule of law and state security). In addition, restrictions on the right to strike are stipulated in Article 21 paras. (2) and (3) of the Code on Railway Transportation (Law No. 309-XV of 17 July 2003).

On 7 November 2017, following the filing of a complaint (no. 62a/2017) by the People's Advocate, the Constitutional Court delivered a judgment on the constitutionality of Article 369 paras. (2), (3) and (4) of the Labour Code, Article 21 paras. (2) and (3) of the Code on Railway Transportation and Government Decision no. 656 of 11 June 2004 on the approval of the Nomenclature of Units, Sectors and Services whose employees cannot take part in strike. The Constitutional Court made an explicit reference to the European Social Charter, noting that although the Charter recognizes the right to strike, it "admits restrictions in this regard, in order to respect the rights and freedoms of others, or to protect public order, national security, public health or good morals".<sup>54</sup> The Court concluded that the restrictions to the right to strike imposed under Article 369 of the Labour Code were proportionate to the aim of ensuring that services essential to the collectivity shall not be affected, including law enforcement activities. It also noted that the restrictions to the right to strike do imposed under Article 369 of the Labour Code do not make it impossible for the socio-professional categories of employees concerned to defend their professional and social interests, as well as their legitimate rights, since Article 369(4) of the Labour Code provides for the settlement of collective labour disputes by conciliation commissions (extrajudicial bodies) and by ordinary courts. The Court did impose, however, that Government Decision no. 656 of 11 June 2004 on the approval of the Nomenclature of Units, Sectors and Services whose employees cannot take part in strike, be read in accordance with Article 369(3) of the Labour Code, which implies that certain of its provisions be restricted in scope.

In its 2018 Conclusions,<sup>55</sup> the European Committee of Social Rights concludes that the situation in the Republic of Moldova is not in conformity with Article 6§4 of the Charter on the grounds that:

- the restrictions on the right to strike for public officials and employees in sectors including the public administration, state security sectors and national defence go beyond those permitted by Article G of the Charter;

<sup>54</sup> See Article G of the European Social Charter.

<sup>55</sup> 2018/def/MDA/6/3/EN.

- the right to strike is denied to all employees in electricity and water supply services, telecommunication and air traffic control;
- the restrictions on the right to strike of the employees of the customs authorities go beyond those permitted by Article G of the Charter; and
- the obligation imposed on workers on strike to protect enterprise installations and equipment go beyond those permitted by Article G.

In order to implement the judgment delivered on 7 November 2017 by the Constitutional Court, the Government adopted Decision no. 389 on 25 April 2018, which amends the Nomenclature of Units, Sectors and Services whose employees cannot take part in strike.<sup>56</sup> That decision, however, still does not result in ensuring compatibility with the European Social Charter.<sup>57</sup> It still prohibits all employees from the electricity and water supply services, as well as from the air traffic control services, from resorting to a strike; and it provides for the area of telecommunications that the right to strike cannot be exercised by employees involved in the operational maintenance and management of electronic communications infrastructure and services.

#### **Article 28 - Right of workers' representatives to protection in the undertaking and facilities to be accorded to them**

In addition to trade union representatives, there are other kinds of workers' representatives in Moldova, who enjoy protection when participating in collective bargaining. However, the European Committee on Social Rights expressed its concern that such workers' representatives were not guaranteed protection against dismissal and prejudicial acts short of dismissal (such as denial of certain benefits, training opportunities, promotions or transfers, discrimination when issuing lay-offs or assigning retirement options) when exercising their functions outside the scope of collective bargaining. Moreover, facilities identical to those afforded to trade union representatives are not made available to other workers' representatives.

#### **4. Children, families and migrants**

Children, families and migrants (thematic group 4 of articles of the European Social Charter) covers: the right of children and young persons to protection (Article 7); the right of employed women to protection of maternity (Article 8); the right of the family to social, legal and economic protection (Article 16); the right of children and young persons to social, legal and economic protection (Article 17); the right of migrant workers and their families to protection and assistance (Article 19); the right of workers with family responsibilities to equal opportunity and treatment (Article 27); the right to housing (Article 31).

#### **Article 7 - Right of children and young persons to protection**

##### **Paragraph 1 - Prohibition of employment under the age of 15**

Under Article 7, para. 1 of the European Social Charter, States parties have undertaken to set the minimum age of admission to employment at 15 years, "subject to exceptions for children employed in prescribed light work without harm to their health, morals or education". The European Committee of Social Rights takes the view that "work within the family (helping out at home) also comes within the scope of Article 7§1 even if such work is not performed for an enterprise in the legal and economic sense of the word and the child is not formally a worker. Although the performance of such work by children may be considered normal and even forming part of their education, it may nevertheless entail,

<sup>56</sup> Official Monitor No. 133-141 art. 431, 27 April 2018.

<sup>57</sup> This assessment is difficult to make, however, since the list refers to "civil servants with special status" in a number of sectors or administrations being excluded from the right to strike, without the meaning of this expression being explained.

if abused, the risks that Article 7§1 is intended to eliminate".<sup>58</sup> In order to limit the risk of abuse, the States parties which accepted this provision of the Charter are also required to "define the types of work which may be considered light, or at least to draw up a list of those who are not. Work considered to be light ceases to be so if it is performed for an excessive duration".<sup>59</sup>

According to Article 46(2) of the Labour Code, the minimum age of admission to employment is 16. According to Article 46(3) of the Labour Code, a person can conclude an individual labour contract at the age of 15 subject to the written consent of the child's parents or his legal representatives and provided that the respective work will not cause harm to his health, development, education and vocational training. These provisions of the Labour Code have not been amended as part of the recent changes made to the Labour Code.

The European Committee of Social Rights expressed two concerns as regard the implementation of this paragraph of the Charter in the Republic of Moldova, respectively in 2015 and in 2019.<sup>60</sup> First, it asked whether the prohibition of employment under the age of 15 applied also to work carried out on farms, in family businesses and private households, and whether it applied to all forms of employment (employee, self-employed, unpaid helper or other); and it considered that the legislation on the prohibition of employment under the age of 15 is not effectively enforced. Secondly, it considered that the situation is not in conformity with Article 7 para. 1 of the Charter on the ground that the definition of "light work" is not sufficiently precise in the national legislation. Under Article 46 (4) of the Labour Code, while the employment of persons under the age of 15 is forbidden, this prohibition does not extend to "light work" that may be carried out by children of 14 years of age.<sup>61</sup> In its 2019 Conclusions, the Committee concluded that the situation in the Republic of Moldova is not in conformity with Article 7§1 of the Charter both because the definition of "light work" is not sufficiently precise. It would appear however that the failure to define "light work" as requested by the Committee is due to the inability of the social partners to agree on a definition, in part because of doubts as to which definition might be compatible -- or not -- with the requirements of the European Social Charter.

The question of child labour is linked to those of access to education and to school dropout. A major challenge that the Republic of Moldova faces in this regard concerns the high figures of parents emigrating abroad, leaving their children in the hands of their relatives, generally the grandparents, who may have fewer incentives to ensure that children attend school and are supported at home to perform well in school. Another reason for relatively high levels of school dropout is early marriage in the Roma community: according to data provided by the Ministry of Education, Culture and Research, 71 out of a total of 221 children having dropped out from school in 2018-2019 were Roma children.

The role of "community mediators" may be crucial in this regard, since they allow to build a constructive dialogue between the community and local authorities. The European Commission against Racism and Intolerance (ECRI) expressed its concern in 2018 that following the decentralisation reform in Moldova, responsibility for paying mediators' salaries shifted to the local authorities, which had a negative effect on the recruitment of mediators: according to the data reported by ECRI, 25 community mediators had been recruited in 2014, but their number fell to 12 by 2016 and seven by October 2017.<sup>62</sup> Since that assessment however, the situation has improved: approximately 40 community mediators are now operating, and they are paid by the central government, rather than by the local authorities. Nevertheless, various stakeholders consulted in the preparation of this needs assessment study deplored that the training of these community mediators was poor, and that their number remains below what would be required.

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<sup>58</sup> *International Commission of Jurists (CIJ) v. Portugal*, Complaint No. 1/1998, Decision on the merits of 9 September 1999, § 28.

<sup>59</sup> *Id.*, §§ 29-31.

<sup>60</sup> See 2015/def/MDA/7/3/EN and 2019/def/MDA/7/1/EN.

<sup>61</sup> Direct Request (CEACR) – adopted 2018, published 108th ILC session (2019), Minimum Age Convention, 1973 (No. 138), Republic of Moldova (Ratification 1999).

<sup>62</sup> European Commission against Racism and Intolerance (ECRI), Report on the Republic of Moldova (fifth monitoring cycle), adopted on 20 June 2018 (CRI(2018)34), para. 79.



Finally, a third obstacle seems to result from the development of "circumscription schools", following the reorganisation of schools in rural areas in Moldova. The creation of such schools was launched in 2004-2006, as part of a broad set of commitments summarized in the Poverty Reduction Strategy Paper adopted at the time, which mentioned the establishment of such schools (together with the provision of transportation services for pupils) as part of the priority actions to be taken.<sup>63</sup> The objective was in principle to facilitate access to education for children living in rural areas, while at the same time rationalising the use of resources in a context in which a number of schools in rural areas only had a very limited number of pupils attending, as a result of families emigrating or moving from rural areas to the cities. In practice however, the establishment of these "circumscription schools", to which schoolchildren from neighbouring districts are to be transported by public transportation means, have been the source of a number of problems.<sup>64</sup> The means of transportation provided have proven to be insufficient, forcing children to sometimes walk long distances to attend the nearest "circumscription school", under sometimes unsafe conditions. The families themselves have sometimes been forced to make up for the lacunae of public transport facilities, by paying for rented transportation. Moreover, existing transportation facilities are not adapted to the special needs of children with limited mobility. Finally, the participation of children in extracurricular activities, outside teaching times, on the schools' premises, is very difficult or impossible for children living at a distance.

## **Article 7 - Right of children and young persons to protection**

### **Paragraph 3 - Prohibition of employment of children subject to compulsory education**

According to the interpretation given to this provision by the European Committee of Social Rights, during the school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework. The Committee also adopted a Statement of Interpretation on the permitted duration of light work: children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work, and work considered to be "light" in nature ceases to be so, according to the Committee, if it is performed for an excessive duration. Therefore, children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education.<sup>65</sup>

The Education Code (article 13 (2)) establishes the compulsory education until the age of 16 years. According to the Labour Code, the reduced weekly working time is 24 hours for employees aged 15 to 16 (article 96(2)(a)). In its 2019 Conclusions,<sup>66</sup> the Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 7§3 of the Charter on the grounds that: the daily and weekly duration of work permitted to children subject to compulsory education is excessive and therefore such work cannot be qualified as light; and that it has not been established that children who are still subject to compulsory education are guaranteed at least two consecutive weeks of rest during summer holiday.

## **Article 7 - Right of children and young persons to protection**

### **Paragraph 10 - Special protection against physical and moral dangers**

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<sup>63</sup> Poverty Reduction Strategy Paper 2004-2006, para. 506.

<sup>64</sup> These concerns were expressed, for instance, by the People's Advocate in his submission to the Committee on Economic, Social and Cultural Rights, when the Committee examined the third periodic report of the Republic of Moldova under the International Covenant on Economic, Social and Cultural Rights at its sixty-second session (18 September-6 October 2017).

<sup>65</sup> European Committee of Social Rights, Statement of Interpretation, General Introduction, Conclusions 2015.

<sup>66</sup> 2019/def/MDA/7/10/EN.

In order to guarantee the right provided by Article 7§10 of the European Social Charter, Parties must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular children's involvement in the sex industry. This prohibition must be accompanied by an adequate supervisory mechanism and sanctions. In its 2019 Conclusions however,<sup>67</sup> the Committee regrets that the information provided by Moldova does not allow it to assess the situation under this provision of the Charter. It did express its concern, however, about the large number of children are in streets situations, a development explained by parents' alcohol abuse, domestic violence, child abuse and lack of child supervision. And it asked what measures have been taken to protect and assist children in vulnerable situations, with particular attention to children in street situations and children at risk of child labour, including those in rural areas.

The protection of children in the Republic of Moldova was examined by the UN Committee on the Rights of the Child (CRC) in 2017.<sup>68</sup> The CRC noted that the Republic of Moldova adopted new laws and measures to reinforce the protection of children, in particular the Law No. 315 on social benefits for children (2016) and Law No. 140 on the Special Protection of Children at Risk and Those Separated from their Parents (2013). It also welcomed the establishment in 2016 of the National Agency for Social Assistance and the adoption in 2014 of the National Strategy on Child Protection and its corresponding Action Plan, with a particular focus on deinstitutionalisation and prevention of violence against children.

Government Decision no. 270 of 8 April 2014 approved the Instructions on the cross-sectoral cooperation mechanism for identifying, assessing, referring, assisting and monitoring child victims and potential victims of violence, neglect, exploitation and trafficking. The Instructions impose a duty on employees of central and local public authorities, structures, institutions and services who work in the fields of social assistance, education, health care, law enforcement to report cases and suspicions of violence, neglect, exploitation or child trafficking, and to combat them through social assistance, or educational, medical or public order services. A joint order of Ministry of Labour, Social protection and Family, Ministry of Education, Ministry of Internal Affairs also approved the content of the "notification sheet" of suspected cases of violence, neglect, exploitation and trafficking of children, with a standardised list of indicators on signs of neglect and violence. This notification is mandatory to be fill in and sent to the guardianship authority.

Despite this however, the Concluding Observations of the Committee on the Rights of the Child mention an increase in the number of cases of sexual abuse and exploitation of children, including within the family, and in particular among girls; and it deplored the inaction by law enforcement officials in investigating cases and even their direct involvement as perpetrators of such abuses. Under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the Committee on the Rights of the Child also noted that the Republic of Moldova is becoming a popular destination for child sex tourism and that the measures taken by the authorities to counteract the sexual exploitation of children in tourism and the involvement of tourism agencies in recruiting and involving children in commercial sex for tourists have so far been insufficient.<sup>69</sup>

## **Article 8 - Right of employed women to protection of maternity**

### **Paragraph 4 - Regulation of night work, and Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work**

Article 8 of the European Social Charter provides that States parties "regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants"; and that they "prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment

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<sup>67</sup> 2019/def/MDA/7/1/EN.

<sup>68</sup> CRC/MDA/CO/4-5 (2017).

<sup>69</sup> CRC/C/OPSC/MDA/CO/1.

rights of these women". According to the Statement of Interpretation on Articles 8§4 and 8§5 adopted by the European Committee on Social Rights (Conclusions 2019), no loss of pay should result from the changes in the working conditions or reassignment to a different post to protect pregnant women and that in case of exemption from work related to pregnancy and maternity, the woman concerned should be entitled to paid leave; the women concerned also should retain the right to return to their previous employment at the end of the protected period.

Article 250 of the Labour Code (Transfer to another job of certain categories of women) provides that: "If, as a result of the occupational risk assessment in accordance with the Law on Occupational Safety and Health, work performed by a pregnant woman, a woman who has recently given birth or a breastfeeding woman proves to present safety risks or her health or may have repercussions on pregnancy or breastfeeding, the employer shall take the necessary measures to exclude, through a temporary change in working conditions, the influence of risk factors on such persons" (para. 1). Where such a change of the working conditions, provided in par. (1), cannot be made, the woman concerned should be offered another job, "so as to avoid exposing her to the risk factors identified in the assessment", and the salary should remain at least equivalent (para. 2). These guarantees "also apply in cases where pregnancy or breastfeeding occurs during the performance of work that involves the influence of risk factors, provided that the employer is properly informed" (para. 3). Moreover, pregnant women, women who have recently given birth and those who are breastfeeding shall be removed from night work and shall be given a day job, with the same salary (para. 4). If these adaptations cannot be made, the woman concerned shall be "exempted from fulfilling their work obligations, while maintaining the average salary for the days they did not work because of it" (para. 5). Finally, "women who have children up to 3 years of age, if they do not have the possibility to fulfill their work obligations, are transferred, in the manner provided by this code, to another place of work, with the maintenance of the average salary from the previous job until the children reach the age of 3 years" (para. 6).

Despite these provisions, the European Committee of Social Rights found in its 2019 Conclusions,<sup>70</sup> that the situation in the Republic of Moldova is not in conformity with Article 8§4 of the Charter on the ground that it had not been established that regulations on night work (including in particular Article 103 of the Labour Code) offer sufficient protection for employed women who are pregnant, have recently given birth or are nursing their infant. The Committee also concludes that the situation in the Republic of Moldova is not in conformity with Article 8§5 of the Charter on the grounds that it has not been established that: pregnant women, women who have recently given birth and who are breastfeeding their infants are entitled to paid leave if it is impossible to transfer them to lighter duties; and that, in case of reassignment to a different post, the law guarantees the employees' right to return to their previous employment at the end of the maternity/nursing period. This would appear to call for amendments to be made either to Article 248 of the Labour Code or to Government Resolution No. 1408/2016 (setting out the minimum health and safety requirements for women who are pregnant, have recently given birth or are nursing their infant), in order to strengthen the protection of pregnant and nursing women.

## **Article 16 - Right of the family to social, legal and economic protection**

**Violence against women and domestic violence.** The European Committee of Social Rights found in 2019 that the situation in Moldova is not in conformity with the European Social Charter since, in its assessment, there is no adequate protection for women victims of domestic violence, in law and in practice.<sup>71</sup> Indeed, the 2019 OSCE-led [Survey on Violence Against Women](#) "Well-being and safety of women", which covers Moldova in addition to Albania, Bosnia and Herzegovina, Montenegro, North Macedonia and Serbia, and Ukraine (as well as the territory of Kosovo) confirms the persistence of gender-based and domestic violence in Moldova.

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<sup>70</sup> 2019/def/MDA/8/4/EN.

<sup>71</sup> 2019/def/MDA/7/10/EN.

The persistence of this issue is further confirmed by a number of cases decided by the European Court of Human Rights, which has concluded in various instances that Article 3 of the European Convention on Human Rights (prohibition of inhuman or degrading treatment), or the non-discrimination provision of Article 14 in conjunction with Article 3, were violated on account of the authorities' failure to provide protection from domestic violence and their discriminatory attitude displayed towards the victims based on their gender. In particular, the European Court of Human Rights considered that the combination of shortcomings noted in the way the authorities dealt with domestic violence clearly demonstrated "that the authorities' actions were not a simple failure or delay in dealing with violence against the first applicant, but amounted to condoning such violence and reflected a discriminatory attitude towards her as a woman. The findings of the United Nations Special rapporteur on violence against women, its causes and consequences (...), as well as statistical data gathered by the National Bureau of Statistics (...) only support the impression that the authorities do not fully appreciate the seriousness and extent of the problem of domestic violence in Moldova and its discriminatory effect on women".<sup>72</sup>

While the European Court of Human Rights made this assessment in 2014, this is still an important concern in the Republic of Moldova. Indeed, following her visit to Moldova from 9 to 13 March 2020, the Commissioner for Human Rights of the Council of Europe Ms Dunja Mijatović encouraged the Moldovan authorities to "ensure that the general public has accurate and factual information about the true nature and scope of the problem of violence against women and domestic violence and the measures envisaged in the Istanbul Convention to respond to and prevent these phenomena".<sup>73</sup> She also recommended to increase "the number of shelters and other support services available to victims of violence against women, including sexual and domestic violence, and ensure that these are accessible throughout the whole territory of the country, including in rural areas".<sup>74</sup>

It is against this background that the accession of the Republic of Moldova to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) should be treated as a priority -- as indeed, also recommended by the Commissioner for Human Rights. During a meeting held on 16 September 2020 with members of the Committee on Human Rights and Inter-Ethnic Relations of the Parliament, in preparation of this needs assessment report, the author was assured that the said committee was in favour of such accession. A government bill has been presented to that effect in December 2019.

**Private and professional life.** In its 2019 Conclusions,<sup>75</sup> the European Committee on Social Rights recalls its earlier conclusions (from 2011 and 2015) according to which childcare facilities are in conformity with the Charter. It asks nevertheless the next report to provide updated information on the organisation of childcare, notably the distribution of childcare facilities across the country, the coverage with respect to the number and proportion of children aged 0-6 and the cost of childcare to parents.

In contrast, the CEDAW committee expressed its concern at the lack of affordable childcare facilities that would better enable parents to reconcile family and professional life, and it recommended promoting the equal sharing of family and domestic responsibilities between women and men, "including by encouraging men to take paternity leave, and increase access to affordable, inclusive and accessible childcare facilities".<sup>76</sup>

**Equal access to family benefits.** The European Social Charter provides that States Parties must ensure equal treatment of foreign nationals of other States Parties who are lawfully resident or regularly working in their territory with respect to family benefits. In its 2019 Conclusions,<sup>77</sup> the European Committee of Social Rights concludes on this point that the situation was not in conformity with Article

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<sup>72</sup> Eur. Ct. HR, *T.M. and C.M. v. the Republic of Moldova*, application No. 26608/11, Judgement of 28 January 2014.

<sup>73</sup> CommDH(2020)10, 25 June 2020, p. 5.

<sup>74</sup> Id., para. 19, p. 11.

<sup>75</sup> 2019/def/MDA/7/10/EN.

<sup>76</sup> CEDAW/C/MDA/CO/6, 10 March 2020, para. 33, e).

<sup>77</sup> 2019/def/MDA/7/10/EN.

16 of the Charter on the ground that equal treatment with regard to access to family allowances is not guaranteed with respect to nationals of all the other States Parties.

**Level of family benefits.** Under Article 16 of the European Social Charter the State must ensure the economic protection of the family by appropriate means. The primary means should be family or child benefits provided as part of social security, available either universally or subject to a means-test. Child benefit must constitute an adequate income supplement, which is the case when it represents an adequate percentage of median equivalised income, for a significant number of families.<sup>78</sup> In this regard, the European Committee of Social Rights found that the situation in Moldova is not in conformity with the Charter, since the child raising allowance is awarded from birth till the age of 2 for uninsured persons and 3 years for insured persons, and therefore does not cover a significant number of families and a significant number of children.<sup>79</sup>

**Housing for families.** In its 2019 Conclusions, the European Committee of Social Rights concludes that the situation in the Republic of Moldova is not in conformity with Article 16 of the Charter on the following grounds since it had not been established that Roma families are adequately protected with respect to housing.<sup>80</sup> To arrive at this conclusion, the Committee considered the application of the Housing Act adopted on 17 July 2014 and the results of a housing construction project for socially vulnerable groups (Phase II); the number of social apartments built and the financial resources allocated each year from the state budget to the project; and the impact the new law regarding housing (Law No. 75/2015). It noted, however, the concerns expressed by the United Nations Committee on Economic, Social and Cultural Rights about the insufficient provision of social housing to marginalised groups and individuals,<sup>81</sup> and it examined in particular whether Roma families benefited from the measures in place, taking into account the 2018 ECRI report on the Republic of Moldova which noted that although the Law on Housing enacted in 2015 recognised Roma as one of the beneficiaries of social housing, its application was questionable due to the severe lack of financial resources.<sup>82</sup> Noting that other monitoring bodies have also expressed concerns about the housing situation of Roma during the reference period,<sup>83</sup> the Committee concluded that it has not been established that Roma families are adequately protected with respect of housing. It noted in this regard from the ECRI report that a new Action Plan for Roma for 2016-2020, which includes *inter alia* measures in the area of housing, was adopted. The impacts of this Action Plan shall be important to assess.

The European Committee of Social Rights is not alone in expressing its concerns in this regard. Following her visit to Moldova from 9 to 13 March 2020, the Commissioner for Human Rights of the Council of Europe deplored the "substandard living conditions of Roma families".<sup>84</sup> A 2019 [report on inequalities in Moldova](#) for the East Europe Foundation found that across all community services considered (aqueduct, sewerage, gas connection, waste disposal, paved road in front of the house, street lighting, playground around the house), the households of Roma people benefit less from services and utilities, compared to those of non-Roma people, a difference in treatment that 47% of the Roma people surveyed attribute to discrimination. However, with the exception of street lighting, the most significant inequalities are related to household income.<sup>85</sup>

In addition to emphasising the need to ensure that, "within the general framework of housing policies, integrated and appropriate housing policies targeting Roma are developed" (principle 1), and to address

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<sup>78</sup> Conclusions 2006, Statement of Interpretation on Article 16.

<sup>79</sup> 2019/def/MDA/7/10/EN.

<sup>80</sup> 2019/def/MDA/16/EN.

<sup>81</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of the Republic of Moldova, 6 October 2017, §§ 54-55.

<sup>82</sup> European Commission against Racism and Intolerance (ECRI), Report on the Republic of Moldova (fifth monitoring cycle), adopted on 20 June 2018 (CRI(2018)34), para. 85. See also European Roma Rights Centre (ERRC), *Thirsting for justice – Europe's Roma Denied Access to Clean Water and Sanitation* (2017), p. 35.

<sup>83</sup> See, in particular, Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth opinion on the Republic of Moldova, 25 May 2016, §§ 104 and 106.

<sup>84</sup> CommDH(2020)10, 25 June 2020, p. 6.

<sup>85</sup> See [https://eef.md/media/files/files/unequal-moldova-report-english-web\\_1278956.pdf](https://eef.md/media/files/files/unequal-moldova-report-english-web_1278956.pdf) (at pp. 23-24).

the specific problems of Roma "as a matter of emergency, and in a non-discriminatory way", since they "continue to be among the most disadvantaged population groups in Europe" (principle 2), [Recommendation Rec\(2005\)4](#) of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe<sup>86</sup> recommends that Council of Europe member states "provide the same adequate level of services to Roma settlements and camp sites as to other groups of the population, while keeping in mind the need for sustainable solutions. Moreover, authorities should be aware that, beyond the delivery of adequate services, they should act so as to improve the overall quality of life in Roma settlements and camp sites by promoting better management of daily life, that is: area-based administrative, commercial, social and sanitary services, public transportation, refuse disposal, the upkeep of public apartments, buildings or camp sites and their surroundings, adequate management of neighbourhood conflicts and of problems linked to non-payment of rents and services, and so on" (principle 27).

In order to guide housing policies and the implementation of the right to adequate housing, [General Comment No. 4 on the right to adequate housing](#) adopted in 1991 by the Committee on Economic, Social and Cultural Rights -- which Recommendation (2005)4 of the Committee of Ministers refers to on a number of occasions -- is also relevant. That general comment notes, in particular, that "adequate housing" includes a requirement of *availability of services, materials, facilities and infrastructure*: "An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services" (para. 8, b)).

#### **Article 17 - Right of children and young persons to social, legal and economic protection**

A first priority under Article 17 of the European Social Charter is that Moldova monitors child poverty in its different dimensions. This provision of the Charter guarantees the right of children and young persons to social, legal and economic protection: States parties are to ensure "the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities". In its 2019 Conclusions,<sup>87</sup> the European Committee on Social Rights emphasized that the prevalence of child poverty in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of State Parties efforts to ensure the right of children and young persons to social, legal and economic protection under Article 17 of the European Social Charter. It therefore requested Moldova to provide information on (i) the rates of child poverty ; (ii) measures adopted to reduce child poverty, including non-monetary measures such as ensuring access to quality and affordable services in the areas of health, education, housing etc.; (iii) measures focused on combatting discrimination against and promoting equal opportunities for, children from particularly vulnerable groups such as ethnic minorities, Roma children, children with disabilities, and children in care; and on (iv) how child participation is ensured in work directed towards combatting child poverty.

#### **Article 17 - Right of children and young persons to social, legal and economic protection**

##### **Paragraph 2 - Free primary and secondary education - regular attendance at school**

The European Committee of Social Rights found that the situation in the Republic of Moldova is not in conformity with Article 17§2 of the European Social Charter.<sup>88</sup> It noted, first, that the net enrolment rate in compulsory education remains too low: the gross enrolment rate in primary education in 2016/2017 was 91.3% falling to 90.6% in 2017/2018; the corresponding rates for lower secondary education were 86.6% and 86.6%. It also noted, second, that the measures taken to ensure that Roma children are enrolled in mainstream education are insufficient: while several reports point to an increase in the

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<sup>86</sup> Adopted by the Committee of Ministers on 23 February 2005 at the 916th meeting of the Ministers' Deputies.

<sup>87</sup> 2019/def/MDA/17/1/EN.

<sup>88</sup> 2019/def/MDA/17/2/EN.

educational inclusion of Roma children, particularly at primary school level, owing mainly to Roma community mediators and civil society, enrolment rates for Roma children are still lower than for non-Roma at all stages of education.

Since March 2020, in the context of the pandemic, the shift to online education has particular impacts on socially vulnerable children, who were generally left out of the education system because of poor access to the internet or/and weak numerical literacy. The European Commission against Racism and Intolerance, when it reviewed Moldova in 2018, noted in this regard that, due to poverty (making it difficult or impossible for Roma families to pay for the hidden costs of education), to poor transportation services from the Roma settlements, or to the persistence of low-quality education for the Roma (leading to higher drop-out rates among the Roma in comparison to the general population), "just 21% of Roma children attended pre-school (compared to 79% among the general population) whereas this rate increased to 54 % at primary school level (compared to 90%) and stood at 16% at high school level (compared to 78%)".<sup>89</sup>

### **Article 31 - Right to housing**

Under the European Social Charter, Moldova did not accept articles 31§1, 31§2 and 31§3 concerning adequate housing, the reduction of homelessness and affordable housing. Access to adequate housing for the Roma was discussed above under Article 16 of the European Social Charter. The problem of access to adequate housing does not concern only the Roma, however. Following her visit to Moldova from 9 to 13 March 2020, noting the "general shortage of social housing and limited access to water and sanitation, notably in rural areas", the Council of Europe Commissioner for Human Rights Ms Dunja Mijatović recommended that the authorities "undertake a comprehensive needs assessment with a view to developing targeted housing interventions on the basis of updated information about individuals living in precarious housing conditions, and gradually allocating financial resources for the construction or renovation of social and affordable housing".<sup>90</sup> The improvement of sewage systems, which currently are inadequate (leading waste water to cause considerable pollution to soils and water, with impacts on the environment and on health), should also be treated as a priority.

## **III. National machinery for the protection of human rights**

### **1. Implementation of international human rights law**

Article 4 of the Constitution of the Republic of Moldova provides that:

1. Constitutional provisions concerning human rights and freedoms shall be understood and implemented in accordance with the Universal Declaration of Human Rights, and with other conventions and treaties to which the Republic of Moldova is party.
2. Wherever disagreements appear between conventions and treaties signed by the Republic of Moldova and her own national laws, priority shall be given to international regulations.

Article 19 of the Law on International Treaties of the Republic of Moldova (Law No. 595 of 24 September 1999)<sup>91</sup> provides that international treaties to which the Republic of Moldova is a party shall be applied in good faith. Article 20 adds that "Provisions of international treaties that by their content are applicable to legal relations without adopting special normative acts shall be subject to implementation and application in the legal and justice system of the Republic of Moldova. Normative acts shall be adopted for implementing other provisions of treaties". These provisions impose clear duties on the public authorities to take all measures required for the implementation of the European Social Charter, and they empower courts to apply directly provisions of international treaties that are

<sup>89</sup> European Commission against Racism and Intolerance (ECRI), Report on the Republic of Moldova (fifth monitoring cycle), adopted on 20 June 2018 (CRI(2018)34), para. 81.

<sup>90</sup> CommDH(2020)10, 25 June 2020, p. 7; see also paras. 93-94, pp. 25-26.

<sup>91</sup> Monitorul Oficial al R. Moldova N 24-26/137 of 02.03.2000.

self-executing, i.e., that do not require further implementing legislation at domestic legislation. Article 23 of Law No. 595 tasks the Ministry of Foreign Affairs and European Integration with the duty to ensure that the Republic of Moldova adopt all normative measures required for the full implementation of international treaties to which it is a party.

It follows from these provisions of domestic law that courts should apply the paragraphs of the European Social Charter that the Republic of Moldova has accepted, in all cases where it is possible to do so without the adoption of implementation measures in national legislation. In accordance with Article 4(2) of the Constitution, such cases include situations where disapplying domestic legislation would suffice to give full effect to the requirements of the European Social Charter.

This requires, however, that the training of judges and lawyers be significantly improved on the provisions of the Charter and on the various techniques through which the justiciability of economic and social rights can be ensured. The roles of the Moldovan Bar Association and of the National Institute of Justice are essential in this regard. The Moldovan Bar Association operates the Lawyers' Training Center, which is responsible for training, and professional development of trainee lawyers and lawyers. It does not have a module of training on the European Social Charter. As regards the training programmes proposed by the National Institute of Justice are defined by the Superior Council of Magistrates and the Superior Council of Prosecutors, their human rights component currently focus essentially on the European Convention of Human Rights, which illustrates the danger of a vicious cycle emerging: as long as training in social rights shall remain insufficient, members of the Judiciary shall not be aware of the potential relevance of such rights to their practice, and as a result, there shall be no demand for such training to be provided. This cycle can and should be broken, by including training in the rights of the European Social Charter in the future cooperation between the Council of Europe and the Republic of Moldova.

## **2. Access to justice**

Three areas of concern emerge. The first area concerns the protection of victims of domestic violence and sexual violence. Following her visit to Moldova from 9 to 13 March 2020, the Commissioner for Human Rights drew the authorities' attention to "the necessity to improve access to justice for women victims of domestic violence and sexual violence, and urges them to reinforce capacity-building for the police, prosecutors and the judiciary to ensure that women's complaints are effectively investigated and that cases of violence against them are dealt with in a gender-sensitive way."<sup>92</sup>

The second area concerns children. The Commissioner for Human Rights of the Council of Europe also noted that "concrete measures should be taken to ensure that justice is child-friendly and aims at ensuring the child's rehabilitation and reintegration in society".<sup>93</sup> Although Government Decision No. 708 was adopted on 27 December 2019 approving the Framework Regulation on the organisation and functioning of the Regional Center for Integrated Assistance to Child Victims / Witnesses of Crime and Minimum Quality Standards, based on Barnahus Model, this decision still awaits implementation. Similarly, Law no. 299 of 30 November 2018 on measures and services for children with deviant behavior regulates the measures and services intended for children who have committed a crime, but who are not liable to criminal liability, and children who have committed a misbehavior / contravention, but who are not liable for the contravention liability; however the cooperation mechanism which in principle has to be set up within 12 months of the entry into force of the law still has not been set up.

Further implementation measures are therefore required to ensure that all children coming into contact with the law are treated according to the Council of Europe Committee of Ministers Guidelines of 2010 on Child Friendly Justice.<sup>94</sup> These Guidelines are based on the principles of participation (defined as "the right of all children to be informed about their rights, to be given appropriate ways to access justice

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<sup>92</sup> CommDH(2020)10, 25 June 2020, p. 5.

<sup>93</sup> Id., p. 6.

<sup>94</sup> The Guidelines on Child Friendly Justice were adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies.



and to be consulted and heard in proceedings involving or affecting them"), of the best interests of the child (the best interest of children should be "a primary consideration in all matters involving or affecting them"), dignity ("Children should be treated with care, sensitivity, fairness and respect throughout any procedure or case, with special attention for their personal situation, well-being and specific needs, and with full respect for their physical and psychological integrity"), protection from discrimination and respect for the rule of law.

The third area concerns the role of courts in protection social rights in general. The non-governmental organisations consulted in the preparation of this report noted that there was an important gap between legal coverage and effective coverage in the area of social protection (including for disability benefits, social aid, and unemployment benefits). A lack of trust in the judicial system, as well as a weak information of beneficiaries concerning the rights they may claim, and obstacles to the introduction of legal claims, explain this gap.

### 3. Non-judicial mechanisms

#### a) The Council for Preventing and Eliminating Discrimination and Ensuring Equality (Equality Council)

The Equality Council was established by Article 11 of Law No. 121 of 25 May 2012 on Ensuring Equality. Its functions have been further clarified by Law No. 298 on the Council's Activity on Preventing and Eliminating Discrimination and Ensuring Equality of 21 December 2012, to which an implementing regulation is appended (*Regulamentul de activitate al Consiliului pentru prevenirea și eliminarea discriminării și asigurarea egalității*) (hereafter "Implementing Regulation of Law No. 298"). Both Law No. 121 and Law No. 298 entered into force on 1 January 2013, and the Equality Council is effective since July 2013.

A number of assessments have been made of the anti-discrimination legal framework in Moldova in general, and of the conditions under which the Equality Council functions in particular.<sup>95</sup> Taking into consideration the standards developed by the European Commission against Racism and Intolerance (ECRI)<sup>96</sup> as well as by the Council of Europe's Commissioner for Human Rights,<sup>97</sup> the most important concerns are the following:

1. Article 1 of the Implementing Regulation provides that the Equality Body has the status of a legal entity of public law ("persoană juridică de drept public"). The Implementing Regulation also provides that "the Council shall act impartially and independently from other public authorities, individuals or legal entities" (Art. 20). This is an important component of its independence. As noted by the Council of Europe's Commissioner for Human Rights, stand alone bodies with their own legal status are typically more independent than bodies that form part of a Government department or ministry.<sup>98</sup>

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<sup>95</sup> Two studies have been prepared under the under the Council of Europe and European Union joint project *Supporting national efforts for prevention and combating discrimination in Moldova* itself: *Assessment of the Law on ensuring equality of the Republic of Moldova in compliance with the Council of Europe anti-discrimination standards*, by Ivana Roagna and Nevena Petrusic (February 2016); and *Assessment of Law no. 298 on the activity of the Council for Prevention and Elimination of Discrimination and Ensuring Equality in Moldova*, by Niall Crowley and Ivana Roagna (July 2016). Other significant studies are: Equal Rights Trust (in partnership with Promo-Lex), *From Words to Deeds. Addressing Discrimination and Inequality in Moldova*, The Equal Rights Trust Country Report Series No. 7 (June 2016); and *Legal Analysis of the Decisions of the Equality Council and the Decisions of the Domestic Courts on Discrimination Cases in the Republic of Moldova*, study prepared by John Wadham and Dumitru Russu under "Supporting National Human Rights Institutions as per International Treaty Bodies and UPR Recommendations" project, which is financed by the Ministry of External Affairs of Norway, cofinanced and implemented by the United Nations Program for Development (UNDP) Moldova and the Office of the UN High Commissioner for Human Rights (OHCHR), in cooperation with the Office of the People's Advocate and the Council on the prevention and elimination of discrimination and ensuring equality (November 2016).

<sup>96</sup> ECRI General Policy Recommendation No. 2 on Specialised Bodies to Combat Racism, Xenophobia, Anti-Semitism and Intolerance at National Level (adopted on 13 June 1997).

<sup>97</sup> Opinion of the Commissioner for Human Rights on National Structures Promoting Equality (CommDH(2011)2) (21 March 2011).

<sup>98</sup> Opinion of the Commissioner for Human Rights on National Structures Promoting Equality (CommDH(2011)2), para. 4.4.

The independence of equality bodies is generally seen as requiring also that such bodies are provided with sufficient funds which should be approved by parliament, and that they may decide how to use the funds without interference from the state.<sup>99</sup> The Implementing Regulation of Law No. 298 also provides that the budget of the Council shall be approved by Parliament and thereafter submitted to Government for inclusion in the state budget for the year (Article 3). It would appear, however, that the parliament does not fulfil that role in practice, and that as a result the annual functioning budget of the Equality Council depends on a decision of the Executive (Ministry of Finance); moreover, neither Law No. 121 nor Law No. 298 or its Implementing Regulation provide that the budget allocated needs to be adequate to allow the Equality Council to fulfil its functions effectively. The Committee on Economic, Social and Cultural Rights, in its Concluding Observations on the third periodic report submitted by the Republic of Moldova under the International Covenant on Economic, Social and Cultural Rights, recommended that the Equality Council "be provided with sufficient financial and human resources and ensure that [how it is] financed does not undermine [its] independence".<sup>100</sup>

2. The independence of equality bodies also has been interpreted to require that such bodies are able to "determine their own priorities and exercise their powers as and when they deem necessary".<sup>101</sup> In this regard, Article 11 para. 14 of Law No. 121, which provides that the Parliament should approve the rules of the procedure of the Equality Council, may have to be reexamined, to allow for the Equality Body to adopt its own rules of procedure without interference.<sup>102</sup>

3. At present, neither Law No. 121 nor Law No. 298 or its Implementing Regulation provide for stakeholder participation in the work of the Equality Council. Yet, as noted by the Council of Europe Commissioner for Human Rights, such involvement may enable such a body to "have access to the knowledge, information and ideas held by non-governmental organisations, trade unions, employers and public authorities", thus contributing both to the effectiveness and to the legitimacy of its work.<sup>103</sup> It has therefore been recommended that the Equality Council establish an Advisory Committee, "comprising of representatives of civil society organisations representing groups experiencing inequality under the various grounds covered by Law no.121 on Ensuring Equality and relevant academics, to hear reports on the work of the Council, inform and advise on the plans, priorities, and activities of the Council, and to monitor standards in and support evaluation of the work of the Council".<sup>104</sup>

4. The investigatory powers of the Equality Council remain limited. Whereas, upon receiving a complaint, the Equality Council may rely on the information submitted by the parties,<sup>105</sup> it has no powers to proceed to on-site inspections. This is perceived as a serious restriction to its effectiveness. The Implementing Regulation of Law No. 298 could be amended in order to allow for this possibility.

5. The CEDAW committee is concerned that the Equality Council "is not mandated to sanction gender-based discrimination and that a draft law that was aimed at strengthening the Council was withdrawn following the adoption of Decision No. 635/2018".<sup>106</sup> The CEDAW committee recommends that Moldova should "Resume, without delay, the legislative process to amend Act No. 298/2012 on the Activity of the Council for Preventing and Eliminating Discrimination and Ensuring Equality in order to provide the Council with a strong mandate on women's rights and the authority to issue binding

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<sup>99</sup> See principle 5 of ECRI General Policy Recommendation No. 2 on Specialised Bodies to Combat Racism, Xenophobia, Anti-Semitism and Intolerance at National Level; and Opinion of the Commissioner for Human Rights on National Structures Promoting Equality (CommDH(2011)2), para. 4.4.

<sup>100</sup> UN doc. E/C.12/MDA/CO/3, para. 9.

<sup>101</sup> Opinion of the Commissioner for Human Rights on National Structures Promoting Equality (CommDH(2011)2), para. 4.4.

<sup>102</sup> See *Assessment of Law no. 298 on the activity of the Council for Prevention and Elimination of Discrimination and Ensuring Equality in Moldova*, cited above, p. 11.

<sup>103</sup> Opinion of the Commissioner for Human Rights on National Structures Promoting Equality (CommDH(2011)2), para. 5.3.

<sup>104</sup> *Assessment of Law no. 298 on the activity of the Council for Prevention and Elimination of Discrimination and Ensuring Equality in Moldova*, cited above, p. 13.

<sup>105</sup> See article 15 (1) of the Law No. 121 of 25 May 2012: "When examining the complaint, the Council has the right to request relevant data and information from people that are alleged to have committed discriminatory acts".

<sup>106</sup> CEDAW/C/MDA/CO/6, 10 March 2020, para. 14, b).

rulings and impose sanctions for gender-based discrimination, with the allocation of adequate resources" (para. 15, b)).

The Third National Human Rights Action Plan (2018-2022) (NHRAP) proposes to strengthen the ability of the Equality Council to impose sanctions. Action 1 under strategic goal C of the NHRAP is described as: "Revising the normative framework on preventing and combating discrimination in order to strengthen the Council's investigation and sanctioning powers to prevent and eliminate discrimination and ensure equality". However, following the February 2019 parliamentary elections, the Bill that had been tabled to strengthen the role of the Equality Council and amend laws No. 121 and No. 298 became void, and no new legislative bill has been presented to date.

### **b) The Office of the People's Advocate**

The Office of the Ombudsperson (People's Advocate) faces to a certain extent similar challenges. It was established by the Law on the People's Advocate of the Republic of Moldova of 30 April 2014, which was amended in 2015 and 2016. The People's Advocate was constitutionalised in 2017, when Law no. 70 of 13 April 2017 introduced a new Chapter III in the Constitution, charging the People's Advocate with the task to "ensure the promotion and protection of human rights and fundamental freedoms" and providing, *inter alia*, that "Any interference in the activity of the People's Advocate, deliberate ignorance of referrals and recommendations presented by the People's Advocate, as well as any impairment of his/her activity is subject to legal liability in accordance with the law".

The Office of the People's Advocate was accredited with A status by the Global Alliance of National Human Rights Institutions in 2018, implying that it complies with the Paris Principles (Principles relating to the status of national institutions).<sup>107</sup> However, concerns are still expressed as regards the insufficient human and financial resources allocated to the Office of the People's Advocate to effectively fulfil its mandate<sup>108</sup>, and the lack of procedural guarantees to ensure independence in the appointment of the Ombudsperson of the Office of the People's Advocate. These issues were addressed in its recommendations made in 2018 by the Subcommittee on Accreditation of the Global Alliance of National Human Rights Institutions.<sup>109</sup>

Recent developments in this regard are encouraging. Following an opinion of the Council of Europe's Venice Commission, which was critical of a proposed amendment to Article 37 of the Law on the People's Advocate,<sup>110</sup> that proposal was removed, and the Law on Public Budget and Fiscal Responsibility now provides for a unified procedure for the adoption of the budget of all independent institutions, ensuring that the Parliament may overrule the proposal of the Government. This should guarantee the financial independence of the said institutions. It should also be noted that the budget of the Office of the People's Advocate increased by 112% between 2015 and 2019.

### **c) The National Human Rights Council**

The Third National Human Rights Action Plan (2018-2022) (NHRAP) proposed to establish a National Human Rights Council, as a mechanism for coordinating action on human rights across different ministerial departments, in particular "in order to set the stage for the implementation of the findings (decisions) of the control bodies for the application of the main UN treaties in the field of human rights

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<sup>107</sup> Adopted in 1992 by Human Rights Commission Resolution 1992/54, and endorsed on 20 December 1993 by General Assembly Resolution 48/134.

<sup>108</sup> The Paris Principles provide that national human rights institutions should have "adequate funding" in order to enable the national institution "to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence".

<sup>109</sup> See CEDAW/C/MDA/CO/6, 10 March 2020, paras. 17-18.

<sup>110</sup> See Opinion n° 906/2017 on the proposed new Article 37 of the Law on the People's Advocate, adopted by the Council of Europe's Venice Commission (European Commission for Democracy through Law) at its 113th plenary session (8-9 December 2017).

in the Republic of Moldova", and "to implement the findings (decisions) of these bodies in the domestic law" (p. 3).

The National Council for Human Rights was established by Government Decision no. 65 of 11 February 2019 and it held its first meeting on 15 September 2020. It is chaired by the Prime Minister; the Minister of Justice and the Minister of Foreign Affairs and European Integration would act as vice-chairs. The NHRC is conceived as "a coordinating advisory body deciding on the strategic aspects of implementation of the NHRAP and shall be made up of representatives of the Parliament, Government, central public administration authorities and of the civil society" (p. 15). Its tasks should include, in particular, "preparing the NHRAP implementation recommendations for the public authorities and international recommendations addressed to the Republic of Moldova by the monitoring mechanisms of the UN, Council of Europe, OSCE and other international organisations with competencies in human rights" (p. 16); and establishing "mechanisms of interaction and cooperation with local authorities" (p. 15).

The establishment of such an interministerial taskforce under the direct responsibility of the Prime Minister can be an important tool to improve the ability of the Republic of Moldova to implement recommendations related, in particular, to the European Social Charter. Indeed, it is not unusual for the Conclusions of the European Committee on Social Rights to be examined only by one ministerial department (typically the department in charge of labour and/or social protection, or sometimes the department in charge of foreign affairs), although the European Social Charter in fact covers a wide range of areas that exceed the remit of any single department. In the Republic of Moldova, the follow-up of the conclusions of the European Committee of Social Rights is primarily seen as the responsibility of the Ministry of Health, Social Protection, Labour and the Family; other departments are, it appears, far less involved, and there exists at present no mechanism to ensure involvement of civil society in the implementation of such conclusions.

According to point 21 of the Regulation on the National Council for Human Rights, local public administration authorities are to set up municipal and district commissions for the protection of human rights. The chairman, vice-chairman, other members and the secretary are members of the municipal and district commissions (point 23). The main responsibilities of the municipal and district commissions for the protection of human rights are set out in point 25:

- 1) implementation of national policy documents for the protection of human rights;
- 2) elaboration of local plans and programs regarding the application of national policy documents in the field of human rights protection at local level;
- 3) monitoring the observance of human rights at local level;
- 4) elaboration of half-yearly reports on the observance of human rights at local level and their submission to the Permanent Secretariat.

By September 2020, only 19 local commissions for the protection of human rights has been established, and none of them, it seems, were functioning yet. Local authorities should be made aware of their responsibilities under the European Social Charter, and they should be provided sufficient budgetary means in order to discharge their duties in this regard. The coordination through the National Human Rights Council could support this. This is particularly important since a range of social services are provided by the local public authorities and are financed through the local taxes that they collect, which may lead to disparities across the national territory in the level of implementation of economic and social rights.

#### **IV. Conclusions and key recommendations**

The substantive areas of concern identified above deserve immediate attention from the authorities of the Republic of Moldova, and they are all areas in which cooperation with the Council of Europe would be justified to strengthen capacity and ensure legislative reforms contribute to the full implementation of social rights under the European Social Charter and the other standards of the Council of Europe in the field of social rights.

In some areas, the priority is to improve the implementation of existing legislation. In other areas however, legislative reform and/or substantial budgetary commitments are required. The priorities listed below are based, therefore, on the distinction between (a) areas requiring legislative reform, or changes in the regulatory framework; (b) areas requiring substantial budgetary commitments or capacity-building to improve enforcement of existing legislation; and (c) areas in which gaps may be addressed by improving training of judges and lawyers and awareness-raising. .

(a) **Legislative reform** seems required in the following areas:

- The Bill that had been tabled under the previous legislature to strengthen the role of the Equality Council and amend laws No. 121 and No. 298 should be reintroduced;
- Law No. 121 on Ensuring Equality should ensure that it explicitly prohibits discrimination on grounds of sexual orientation and sexual identity;
- Law No. 158 on State Functions and the Status of Public Servants should be amended to ensure that the condition of nationality only applies to functions that involve the exercise of public authority;
- Law No. 5 of 9 February 2006 on equal opportunities for men and women should be further implemented, through supplementing legislation and bylaws.

In the context of the upcoming revisions of the Labour Code, tabled for the end of 2020 or early 2021, the following reforms should be considered:

- Article 248 of the Labour Code still prohibits certain categories of women from working in mining and other industries that pose a risk to their safety or health. This should be amended and replaced by individual assessments, combined with improvements to the working conditions in all industries;
- Article 86 (1) (d) and (e) of the Labour Code provide that employees dismissed due to a health problem or insufficient qualifications or due to reinstatement of the previous employee following a court's decision (Article 82j<sup>1</sup>) are entitled to a severance allowance, which amounts to two week's average wage; this is insufficient, at least for employees with more than six months of service;
- The same article of the Labour Code, as amended in 2017, allows for the dismissal of all employees reaching pensionable age, in violation of the requirement of non-discrimination on grounds of age; the amendment to this provision should therefore also remove such discrimination;
- Articles 147-150 of the Labour Code allow excessive deductions to wages;
- Art. 359(8) and (9) of the Labour Code provide that if the workers and employers in a collective conflict do not reach an agreement or disagree with a decision of the Conciliation Commission, either of them is entitled to submit, within 10 working days from the date of the decision or receipt of the respective information, a request for settlement of the conflict by the courts, a provision that is not consistent with the right to collective bargaining;
- Article 46 (4) of the Labour Code does not extend the prohibition of work below 15 years of age to "light work", that may be carried out by children of 14 years of age; at the very least, the definition of "light work" should be made more precise;
- Article 96(2)(a) of the Labour Code provides that the reduced weekly working time is 24 hours for employees aged 15 to 16; such a duration of work permitted to children subject to compulsory education remains excessive.

**Executive action** should be taken:

- In order to fully implement the judgment delivered on 7 November 2017 by the Constitutional Court, beyond Decision no. 389 on 25 April 2018 amending the Nomenclature of Units, Sectors and Services whose employees cannot take part in strike, in order to allow employees from the electricity and water supply services, as well as from the air traffic control services, and employees involved in the operational maintenance and management of electronic communications infrastructure and services, to resort to collective action;
- To further combat vertical and horizontal occupational segregation and the gender pay gap, including by developing pay comparisons across companies in the private sector.

**(b) Increased budgetary commitments** should be made in order:

- To ensure access for children with physical or sensory disabilities to mainstream schools, by increasing support to community-based solutions;
- To ensure accessibility of public spaces, transport and services, to persons with disabilities;
- Drawing the lessons from the COVID-19 pandemic, to reinvest in the health care system, both in order to ensure access to healthcare is affordable to all without discrimination (the widespread reliance on out-of-pocket informal payments creates the risk of dualized healthcare system emerging) and in order to retain healthcare personnel (in particular, the insufficient coverage across the country of mental health specialists has been identified as a major problem);
- To increase the number of community mediators supporting the Roma community, and to improve their training;
- To increase the levels of child benefits, as well as their coverage;
- To improve the housing conditions of Roma communities, including sewage systems;
- To strengthen the capacity of the local commissions for the protection of human rights and of the local authorities to discharge their duties in the implementation of social services.

**Labour inspectorates** should dedicate more efforts to ensure effective compliance with Article 34(4) of Law No. 60 of 30 March 2012 on the social integration of persons with disabilities (which imposes an obligation on employers with at least 20 staff to create or reserve 5% of jobs for persons with disabilities). However, such compliance can only be strengthened sustainably in the long term by ensuring greater incentives to employers for recruiting persons with disabilities, which may require legislative reform. Certain important steps have already been taken in this regard, particularly through increased support to employers adopting reasonable accommodation measures.

**(c) In collaboration with the Moldovan Bar Association and the National Institute of Justice, the training of judges and lawyers** should focus in the future on:

- improving awareness and understanding of the provisions of the Charter and on the various techniques through which the justiciability of economic and social rights can be ensured;
- encouraging a reading of Law No. 121 of 25 May 2012 on Ensuring Equality in line with European and international standards, to include a protection from discrimination on grounds of sexual orientation and sexual identity;
- effective enforcement of the principle of equal remuneration for women and men, on the basis of the relevant provisions of the Labour Code, of Law No.121 on Ensuring Equality and of Law No. 5 of 9 February 2006 on Equal Opportunities for Women and Men (respectively article 7(2)(d) of Law No.121 (2012) and article 11 of Law No. 5 (2006)).