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**Report on the Implementation of the European Social Charter in the Republic of Moldova:**

**Key Challenges**

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The views expressed in this report are those of the author and do not necessarily reflect those of the Council of Europe or the European Union. This report has been prepared as a result of an independent assessment by the consultant being contracted under the Project „Supporting national efforts for prevention and combating discrimination in Moldova”.

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## I. Introduction

The European Social Charter was opened for signature by the Member States of the Council of Europe on 3 May 1996, and it entered into force on 1 July 1999.<sup>1</sup> The Republic of Moldova joined the Council of Europe on 13 July 1995. It ratified the European Convention on Human Rights on 24 July 1997, and ratified the 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 1961 European Social Charter Providing for a System of Collective Complaints.<sup>2</sup>

This report identifies the main gaps in the implementation of the European Social Charter in the Republic of Moldova, and the obstacles that the country faces in fulfilling its commitments under the Charter. The report is by no means exhaustive. Rather, it aims to provide a summary of the main issues that arose during a fact-finding mission conducted on 20-21 December 2017, relating the concerns that were raised by certain interlocutors to the standards of the Council of Europe, and especially to the interpretation of the provisions of the European Social Charter by the European Committee of Social Rights.

The report was commissioned by the Council of Europe under the Council of Europe and European Union joint project *Supporting national efforts for prevention and combating discrimination in Moldova*, which is part of the Partnership for Good Governance (PGG). It was prepared between 14 December 2017 and 20 January 2018. It is based both on desk research and on the above-mentioned fact-finding mission conducted in Chisinau on 20 and 21 December 2017.

The author is grateful to the Council of Europe Office in Chisinau for having facilitated the mission. During the mission, he had exchanges with Mr Ian Feldman, the Chair of the Council for Preventing and Eliminating Discrimination and Ensuring Equality; with Ms Rusu Svetlana, Head of the Investigation and monitoring direction at the Office of the Ombudsperson (People's Advocate); and with representatives of Caritas Moldova, of Terre des Hommes, and of the Alliance of Active NGO's in the Field of Social Protection of Family and Child (APSCF). He also had meetings with high-level officials at the Ministry of Health, Social Protection, Labour and the Family, and at the Ministry of Justice. The author would like to thank these interlocutors for the cooperative spirit in which those exchanges took place.

Following this introduction, the report examines the institutional framework for the implementation of the European Social Charter (II), and a number of substantive areas of concern (III). It closes with a set of conclusions and recommendations (IV).

## II. The institutional framework for the implementation of the European Social Charter

### 1. The status of international human rights treaties in the domestic legal order of the Republic of Moldova

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

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<sup>1</sup> E.T.S., n° 163.

<sup>2</sup> E.T.S., n° 158. The Additional Protocol to the 1961 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.

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-XIV of 24 September 1999)<sup>3</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 self-executing, i.e., that do not require further implementing legislation at domestic level. Article 23 of Law No. 595-XIV 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.

Though their role is essential for the effective implementation of human rights treaties, domestic courts are of course not the only institutions that should contribute to ensuring that the Republic of Moldova comply with its international obligations. The implementation by the Republic of Moldova of its international commitments in the area of human rights is significantly strengthened by the work of the Council for Preventing and Eliminating Discrimination and Ensuring Equality (Equality Council) and that of the Office of the Ombudsperson (People's Advocate). Sections 2 and 3 below recall the key elements of the debate concerning these institutions. Section 4 then takes into account the presentation, around the time of the fact-finding mission, of the draft Third National Human Rights Action Plan (2018-2022) (NHRAP), which was presented to the Parliament for approval on 1 December 2017, and should debate it during the first half of 2018.

## **2. The Council for Preventing and Eliminating Discrimination and Ensuring Equality (Equality Council)**

The Council for Preventing and Eliminating Discrimination and Ensuring Equality (Equality Council) was established by Article 11 of Law No. 121 of 25 May 2012 on Ensuring Equality.

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<sup>3</sup> Monitorul Oficial al R. Moldova N 24-26/137 of 02.03.2000.

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>4</sup> It is unnecessary to reiterate here in detail the findings from these various assessments. Taking into consideration the standards developed by the European Commission against Racism and Intolerance (ECRI)<sup>5</sup> as well as by the Council of Europe's Commissioner for Human Rights,<sup>6</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>7</sup>

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>8</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

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<sup>4</sup> Two studies have been prepared 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>5</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>6</sup> Opinion of the Commissioner for Human Rights on National Structures Promoting Equality (CommDH(2011)2) (21 March 2011).

<sup>7</sup> Opinion of the Commissioner for Human Rights on National Structures Promoting Equality (CommDH(2011)2), para. 4.4.

<sup>8</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.

Economic, Social and Cultural Rights, in its Concluding Observations on the third periodic report submitted by the Republic 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>9</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>10</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 re-examined, to allow for the Equality Body to adopt its own rules of procedure without interference.<sup>11</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>12</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>13</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>14</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 legislative framework concerning anti-discrimination and equality of treatment is currently under review, and may be amended in 2018. Concerns have been expressed that amendments to Law No. 121 and to Law No. 298 and its Implementing Regulation may impose new restrictions on the ability for the Equality Council to fulfil its duties, in particular by questioning the duty of the parties concerned, following a finding of discrimination, to faithfully implement the recommendations addressed to such parties (see Article 32 of the Implementing Regulation, in particular b)). However, the intentions expressed in the draft NHRAP seem to alleviate any such concerns. The draft NHRAP proposes, instead, to strengthen the ability of the Equality Council to impose sanctions:

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

<sup>10</sup> Opinion of the Commissioner for Human Rights on National Structures Promoting Equality (CommDH(2011)2), para. 4.4.

<sup>11</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>12</sup> Opinion of the Commissioner for Human Rights on National Structures Promoting Equality (CommDH(2011)2), para. 5.3.

<sup>13</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>14</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".

Currently, the Council is only competent to reveal contraventions with discriminatory elements, the sanctioning being the prerogative of the courts. The competence to apply sanctions for discrimination offenses would ensure the effectiveness of practical implementation of anti-discrimination legislation. (p. 5).

Consistent with this pledge included in the draft NHRAP, 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".

Concerns have also been expressed that the role of the Equality Council to recommend, at its own initiative, changes in legislation in order to promote the fight against discrimination, as currently provided for under Article 12 of Law No. 121 (see in particular Art. 12, para. 1, b), listing among the attributions of the Equality Council "inițiază propuneri de modificare a legislației în vigoare în domeniul prevenirii și combaterii discriminării"), may be questioned. In his dialogue with the representative of the Ministry of Justice, this author received reassurances on both points. It would be important however, that in the preparation of this reform, the standards of the Council of Europe be carefully considered, and any deviation therefrom duly justified.

### **3. The Office of the Ombudsperson (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 constitutionalized 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 Ombudsperson currently has "B" status under the Global Alliance of National Human Rights Institutions (GANHRI) (formerly International Coordinating Committee for National Human Rights Institutions (ICC)), implying that it is not fully in compliance with the Paris Principles (Principles relating to the status of national institutions).<sup>15</sup> The most important obstacle to its elevation to "A" status (full compliance) concerns its funding. 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".

Article 37.3 of the Law on the People's Advocate currently provides that "the annual budget of the office is approved by the parliament, at the proposal of the People's advocate. The reduction of the approved costs related to the Office activity is allowed only by the Parliament decision". This formulation was welcomed by the Venice Commission in an opinion it delivered in 2015, as it was seen to ensure a sufficient independence of the

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<sup>15</sup> Adopted in 1992 by Human Rights Commission Resolution 1992/54, and endorsed on 20 December 1993 by General Assembly Resolution 48/134.

Ombudsperson from the kind of pressure that could result from the threat of imposing budgetary cuts to its activities; the Venice Commission added however, as regards the second sentence, that Article 37.3 should add a clause prohibiting the public authorities from using the budgetary process for allocating/reducing funds from the budget "in a manner that interferes with the independence of the People's Advocate institution".<sup>16</sup>

It is now proposed under Article LXXIIX of the draft Law on amendments and completion of some legislative acts (the draft Law was pending at the time of the mission) that this provision of the 2014 Law on the People's Advocate be amended to read as follows:

**Article 37. Office funding**

(1) The Office is funded from the state budget within the limits of budget allocations approved through the annual budget law.

(2) The Office Budget is elaborated, approved and administrated under the rules and procedures established by the Law on public finances and budgetary-fiscal responsibilities.

At its 113th plenary session (8-9 December 2017), the Council of Europe's Venice Commission (European Commission for Democracy through Law) adopted Opinion n° 906/2017 on the proposed new Article 37 of the Law on the People's Advocate. It concluded that that, although various measures have been taken in recent years to strengthen the People's Advocate (not least by the insertion of chapter III in the Constitution), the proposed amendment "goes in the opposite direction, significantly weakening the financial independence of this institution" (para. 37), and recommended reconsidering the proposal.

The draft NHRAP includes a reference to the discussion concerning the independence of the People's Advocate in relation to its financing, and commits to "ensuring the compliance of the Ombudsperson's mandate and practice with the Paris Principles, including obtaining the A Status" (p. 5).<sup>17</sup> It is therefore to be hoped that, consistent with the intentions expressed in the draft NHRAP and with the general effort to strengthen the independence and effectiveness of the Office of the Ombudsperson, the recommendation of the Venice Commission shall be taken into account.

#### **4. The National Human Rights Council**

Among the innovative proposals of the draft NHRAP is to establish a National Human Rights Council. The NHRC is conceived 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 in the Republic of Moldova", and "to implement the findings (decisions) of these bodies in the domestic law" (p. 3).

The National Human Rights Council would be chaired by the Prime Minister; the Minister of Justice and the Minister of Foreign Affairs and European Integration would act as vice-chairs.

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<sup>16</sup> CDL-AD (2015)017, para. 75.

<sup>17</sup> See in the annex to the NHRAP Area of intervention 4: Strengthening the national human rights protection institutes, Objective I: Compliance of the mandate and practice of the Ombudsperson's Office with the Paris Principles, strategic goal A.



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 organizations with competencies in human rights" (p. 16); and establishing "mechanisms of interaction and cooperation with local authorities" (p. 15).

Clearly, the establish 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 1961 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.

It is also important that local authorities be made aware of their responsibilities under the European Social Charter, and that they are guaranteed 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 welcome 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.

In its Concluding Observations adopted in 2017 following the presentation by the Republic of Moldova of its third periodic report under the International Covenant on Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights recommended that the Republic of Moldova "intensify its efforts to address rural-urban inequalities with a view to ensuring that all people in both rural and urban areas fully enjoy the rights enshrined in the Covenant. It also recommends that the State party strengthen the financial, administrative and infrastructural capacity of local government at the provincial and municipal levels; improve the coordination between the central and local governments and the monitoring of social services provided by local governments; ensure that the decentralization process does not adversely affect disadvantaged and marginalized individuals and groups; and conduct a comprehensive analysis of the impact of the decentralization process on the enjoyment of Covenant rights". Noting that "the decentralization by no means reduces the responsibility for fulfilling its obligations under the Covenant", the Committee recommended that "the State party increase the awareness of local authorities regarding their obligations under the Covenant".<sup>18</sup>

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<sup>18</sup> UN doc. E/C.12/MDA/CO/3, para. 13.

### **III. Substantive areas of concern**

This part of the report identifies six key issues that were discussed during the fact-finding mission, concerning the implementation of the European Social Charter 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 1961 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, migrants (group 4). Since the report focuses on the issues that were raised during the fact-finding mission, it 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**

##### **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>19</sup> This law is in many regards progressive, providing for instance for "positive measures" to be taken to protect persons at a particular disadvantage (Article 1(1), Article 5(a)), and defining and prohibiting both direct and indirect discrimination (Article 2), as well as the worst forms of discrimination, which include discrimination based on two or more protected grounds (Article 4).

Certain issues remain to be addressed, however. 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>20</sup> Although the Council on the Prevention and Elimination of Discrimination and Ensuring Equality 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>21</sup> it is unclear whether the other institutions, particularly courts

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<sup>19</sup> Sections 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 section 8 of the amended Labour Code" and that "section 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>20</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>21</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/>

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 the current wording (which provides a non-limitative list of prohibited grounds of discrimination) in order to interpret this provision in accordance with Council of Europe standards.<sup>22</sup>

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>23</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>24</sup> In part because the Roma are "disproportionately likely to be employed as unskilled or informal workers, ... the average monthly income of a Roma family ... is about 1,000 lei (approx. €45), 40% less than the average income of a non-Roma household".<sup>25</sup> The Action Plan for supporting the Roma people for 2016-2020 therefore deserves to be given a high degree of priority; it is welcome that it is listed in the 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).

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, since this prohibition is not limited 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 (Conclusions 2016 (2016/def/MDA/1/2/FR)). Indeed, referring to views it expressed in Conclusions related to Albania (Concl. 2012 - Albania), the Committee recalled 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".

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<sup>22</sup> This is also the conclusion of the study referred to above: *Assessment of the Law on ensuring equality of the Republic of Moldova in compliance with the Council of Europe anti-discrimination standards*, cited above, p. 6.

<sup>23</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>24</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.

<sup>25</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.

Law No. 158-XVI on State Functions and the Status of Public Servants, adopted on 4 July 2008, though it was amended twice in 2012 (by Law No. 167 of 11 July 2012 and by Law No. 268 of 29 November 2012, respectively) should be amended in this regard, 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. Although this was said to be "under discussion" during the fact-finding mission, no assurances could be obtained that a reform was engaged in this regard.

## **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-XVIII 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" (Conclusions 2016).<sup>26</sup> The outstanding problems include:

a) 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. However, according to certain non-governmental sources, "there is a no indication of how this quota will be implemented nor is there sanction for breach".<sup>27</sup> When this question was raised during the fact-finding mission, reference was made to a new legislation that would improve the incentives for employers to comply with this requirement, and the presentation by the government of a Bill for approval by Parliament was presented as imminent.

b) Law No. 60 of 25 May 2012 introduces the notion of reasonable accommodation (defined in Article 2) and defines prohibited discrimination in Article 8(6) as "any distinction, exclusion, exclusion, restriction or preference, *and the refusal to create conditions favorable and reasonable accommodation*" (emphasis added).<sup>28</sup> However, the European Committee of Social Rights considers in its Conclusions 2016 that the degree of implementation of this provision remains unclear, requesting that the next report submitted by the Republic of Moldova provide details on this point, and asking "whether employers are obliged to make

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<sup>26</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*, cited above, p. 270). This view appears to be shared by the representatives of the Office of the Ombudsperson (People's Advocate) met during the fact-finding mission.

<sup>27</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>28</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.

suitable adjustments to the working conditions of persons with disabilities" (Conclusions 2016).

During the fact-finding mission, representatives of the Ministry of Health, Social Protection, Labour and the Family referred to measures that would strengthen the incentives for employers to recruit persons with disabilities, including by providing them higher levels of support for the adoption of measures ensuring reasonable accommodation.

## **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-XVI of 9 February 2006 on equal opportunities for men and women<sup>29</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-XVI 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 organization 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>30</sup> and that the legislation remains incomplete as regards "enforcement mechanisms or remedies for breach of duty".<sup>31</sup> Indeed, certain provisions of Law No. 5-XVI 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>32</sup> This may create a source of confusion as to the immediate and direct effect of Law No. 5-XVI 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 since Article 248 of the Labour Code<sup>33</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 prohibition was found to be "incompatible with the principle of equality laid down in Article 20 of the Charter". The

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<sup>29</sup> Official Monitor of the Republic of Moldova No. 47-50/200 of 24.03.2006.

<sup>30</sup> Equal Rights Trust, *From Words to Deeds: Addressing Discrimination and Inequality in Moldova*, p.257.

<sup>31</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>32</sup> See Articles 16 and 25.

<sup>33</sup> Labour Code of the Republic of Moldova (Law No. 154-XV of 28 March 2003), Monitorul Oficial no. 159-162, art. 648.

recent amendments to the Labour Code (in force since 18 August 2017)<sup>34</sup> have sought to address this concern. The current 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 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>35</sup>

Under Article 8, para. 5 of the European Social Charter, the Parties to this instrument undertake, "with a view to ensuring the effective exercise of the right of employed women to the protection of maternity", to "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 rights of these women". In cases where women in such circumstances cannot continue to be employed in their present position, they should be offered suitable work in another position, without loss of pay; if no suitable work can be found, they should be entitled to a paid leave, at a rate equivalent to that of their salary.

## 2. Labour rights

### Article 6 - Right to bargain collectively

Under Article 6, para. 4 of the European Social Charter, the States parties undertake to recognise "the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into". In its most recent Conclusions adopted as regards the Republic of Moldova under this provision of the Charter, the European Committee of Social Rights took the view that "the situation in Moldova is not in conformity with Article 6§4 of the Charter on the grounds that it is not established that the restrictions to the right to strike of the employees of the customs authorities fall within the limits of Article G of the Charter."<sup>36</sup> Indeed, 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>37</sup>

The 2003 Labour Code, as amended in 2008, provides the following<sup>38</sup> :

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<sup>34</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.

<sup>35</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>36</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>37</sup> Conclusions XVII-1 (2004), Czech Republic.

<sup>38</sup> English version adapted from the translation provided by the International Labour Organisation.

## 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;
  - 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 the 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>39</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 place the socio-professional categories of employees concerned in the impossibility 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.

At the time of the fact-finding mission, the Government of the Republic of Moldova was preparing a new Government Decision, to replace Government Decision no. 656, in order to comply with the judgment of the Constitutional Court. The standards of the Council of Europe should be fully taken into account in the drafting of this new Decision.

### **3. Children, families, migrants**

#### **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, if abused, the risks that Article 7§1 is intended to eliminate".<sup>40</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>41</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

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<sup>39</sup> See Article G of the European Social Charter.

<sup>40</sup> *International Commission of Jurists (CIJ) v. Portugal*, Complaint No. 1/1998, Decision on the merits of 9 September 1999, § 28.

<sup>41</sup> *Id.*, §§ 29-31.



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 (Conclusions 2015 (2015/def/MDA/7/3/EN)). 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). 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.

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. The role of "community mediators" may be crucial in this regard.

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>42</sup> The objective was in principle to facilitate access to education for children living in rural areas, while at the same time rationalizing 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>43</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.

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

Article 7 para. 3 of the Charter (Prohibition of employment of children subject to compulsory education) provides that States parties to the Charter should ensure that "persons who are

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<sup>42</sup> Poverty Reduction Strategy Paper 2004-2006, para. 506.

<sup>43</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). They were reiterated by non-governmental organisations which were heard during the fact-finding mission.

still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education". In the Republic of Moldova, the maximum age of compulsory education is 18 (Education Act, Article 13(2)). The European Committee of Social Rights considers that "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 (General Introduction, Conclusions 2015)".

According to Articles 96(2) and 100(2)-(3) of the Labour Code, the reduced working time for persons between 15 and 16 years of age shall be maximum 5 hours per day and 24 hours per week, and it shall be maximum 7 hours per day and 35 hours per week for persons between 16 and 18 years of age. (These provisions of the Labour Code have not been amended during the most recent reforms of labour legislation). On this basis, the situation in the Republic of Moldova was considered not to be in conformity with the Charter, since (in the view of the Committee) "the daily and weekly working time for children subject to compulsory education is excessive and therefore it cannot be qualified as light work"; moreover, "it has not been established that children subject to compulsory education are guaranteed two consecutive weeks of rest during the summer holiday". The fact-finding mission confirmed that these remain very challenges for the local authorities. Reference is made to the comments made above concerning the implementation of para. 1 of Article 7 of the European Social Charter.

#### **IV. Conclusions and Recommendations**

The following actions could be considered to strengthen the implementation of the European Social Charter in the Republic of Moldova :

- 1.** The Republic of Moldova could examine whether it could go beyond its current level of acceptance of the paragraphs of the Charter (at present, it has accepted 63 of the 98 paragraphs of the Charter). It could also consider ratifying the Additional Protocol to the 1961 European Social Charter Providing for a System of Collective Complaints. This would significantly improve its ability to identify any instance of violation of its duties under the Charter, and facilitate the role of unions or non-governmental organisations in contributing to such compliance.
- 2.** The constitutional and legislative framework currently in force in the Republic of Moldova is in principle adapted to allow courts to directly apply the provisions of the Charter in the cases they are presented with; indeed, the Constitutional Court has been taking into account the Charter in its case-law. However, judges and lawyers could be better trained on the provisions of the Charter and on the various techniques through which the justiciability of economic and social rights can be ensured.
- 3.** The independence of the Council for Preventing and Eliminating Discrimination and Ensuring Equality (Equality Council) could be further strengthened by ensuring that it has the financial and human resources allowing it to function effectively without depending in this regard on the Ministry of Finance, and that it can adopt its own rules of procedure. Its effectiveness would be enhanced by involving external stakeholders, including non-

governmental organisations and unions, in its governance structure, and by expanding its investigatory powers to allow for on-site inspections in the examination of complaints. The current review of the legislative framework concerning anti-discrimination and equality of treatment provides an opportunity in this regard.

4. The independence of the Office of the Ombudsperson (People's Advocate) is threatened by the proposed new Article 37 of the Law on the People's Advocate, as noted by the Council of Europe's Venice Commission (European Commission for Democracy through Law) in Opinion n° 906/2017. This planned amendment should be reconsidered.
5. The draft Third National Human Rights Action Plan (2018-2022) (NHRAP), presented to Parliament for approval on 1 December 2017, provides a unique opportunity to strengthen the implementation of international human rights standards in the domestic legal order of the Republic of Moldova. In particular, this should be facilitated by the establishment of the National Human Rights Council, chaired by the Prime Minister, as a mechanism for coordinating action on human rights across different ministerial departments. A priority for the NHRC should be to ensure that the capacity of local government at the provincial and municipal levels to implement economic and social rights be strengthened, that coordination be improved between the central and local governments, and that the delivery of social services provided by local governments be monitored, to ensure that the decentralization process does not negatively impact on the enjoyment of social rights in the least wealthy parts of the country.
6. Article 1 para. 2 of the European Social Charter (non-discrimination in access to employment as a component of the right to work) only allows to impose a condition of nationality for posts/positions that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority. Law No. 158-XVI on State Functions and the Status of Public Servants should be amended in this regard, 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.
7. Despite the significant progress achieved by Law No. 60 of 30 March 2012 on the social integration of persons with disabilities, more efforts should be put into ensuring that persons with disabilities enjoy equal treatment with regard to access to employment, under Article 15, para. 2 of the Charter. Employers should be supported in their efforts to provide reasonable accommodation for persons with disabilities, and compliance with the existing legislation should be adequately monitored.
8. The amendment to Article 248 of the Labour Code, which entered into force on 18 August 2017, is welcome, insofar as it improves the protection of women under Article 20 of the European Social Charter, which guarantees the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex. However, consistent with Article 8, para. 5 of the European Social Charter, it should also be ensured that in cases where women who are pregnant, have given birth recently or are breast-feeding, or cannot be employed in certain activities due to the risk to their safety or health or that may have an impact on the pregnancy or breastfeeding, are removed from a certain position in the name of the protection of health, they should be offered suitable work in another position, without loss of pay; if no suitable work can

be found, they should be entitled to a paid leave, at a rate equivalent to that of their salary.

- 9.** The Government of the Republic of Moldova is currently examining how to implement the judgment delivered by the Constitutional Court on 7 November 2017, in which the Court assessed 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 adoption a new Government Decision to replace Government Decision no. 656 should be seen as an opportunity to ensure full compliance with the standards of the European Social Charter, beyond the indications already provided by the Constitutional Court in this regard.
  
- 10.** The high school dropout rates and the weak protection of children below the age of 15, in practice, from work (particularly on farms, in family businesses and private households), should be given priority by the authorities of the Republic of Moldova, since the situation in the country is currently not in conformity with Article 7 of the European Social Charter (paragraphs 1 and 3). Specific support should be provided to families where parents have left their children to care-givers, including relatives, or where access to schools is difficult in rural areas, following the reorganisation of the education sector and the establishment of "circumscription schools". The capacity of community mediators for the Roma should also be strengthened.