

The joint European Union and Council of Europe project
„Supporting national efforts for prevention and combating discrimination
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Study

on inclusive education in Europe and in the Republic of Moldova:
reasonable accommodation, access to education and non-discrimination

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„Education is the most powerful weapon which you can use to change the world“.

Nelson Mandela

Quality education is one of the UN's Millennium Development Goals. Each additional year of schooling raises the average annual GDP growth by 0.37%¹, thus helping to alleviate poverty and to eradicate social exclusion and marginalisation. Inclusion and equity are laying foundations for quality education and learning. Education systems need to be child-, disability, and gender-sensitive. They shall provide safe, non-violent, inclusive and effective learning environments for all.

Including all learners and ensuring that each individual has an equal and personalized opportunity for educational progress is still a major challenge for all educational systems over the world and in Europe. “Moving to more inclusive and equitable ways of working requires changes in the culture throughout an education system” (2). It is a complete cultural shift transforming educational policies, structures and attitudinal patterns. In this respect, particular attention shall be given to vulnerable groups, such as Roma children who overwhelmingly face situations of discrimination and stigmatisation. Another challenge is about the deinstitutionalization of disabled children and their integration into the mainstream education system.

The aim of this report is to identify some of the current shortcomings and the remaining obstacles that Republic of Moldova is facing in this transformative process provided by the international and European standards. It is commissioned by the Council of Europe under the CoE and UE joint project “Supporting national efforts for prevention and combating discrimination in the Republic of Moldova”. It is based both on desk research and on a fact-finding mission conducted in Chisinau.

This report first describes the international and European standards in relation to non-discriminatory and inclusive education (I) and gives examples of best practices existing in several European countries (II). It then examines the current legal framework applicable in the Republic of Moldova as well as the remaining gaps and shortcomings in its implementation (III). It concludes with a set of recommendations (IV).

¹ UNESCO, Education counts, Towards the Millennium Development Goals, 2011; <http://unesdoc.unesco.org/images/0019/001902/190214e.pdf>

² A. Dyson, A. Howes, A. and B. Roberts What do we really know about inclusive schools? A systematic review of the research evidence. D. Mitchell (ed.), Special Educational Needs and Inclusive Education: Major Themes in Education, 2004, London, Routledge

Chapter I

THE INTERNATIONAL AND EUROPEAN STANDARDS

I. THE UN FRAMEWORK

The Universal Declaration of Human Rights (UDHR), adopted in 1948, states in Article 26: “Everyone has the right to education”. Since then, the right to education for all people has been reaffirmed in various international and European human rights instruments including the UNESCO Convention against Discrimination in Education (1960), the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966, art. 13-14) and the Convention on the Rights of the Child (CRC, 1989, art. 28-29).

States are required to take measures toward ensuring that education is equally accessible, available, acceptable, and adaptable, while prioritizing the best interests of the child. In its General Comment on Article 13³, the ICESCR distinguishes between four interrelated and key features of education, namely:

1. **Availability:** Educational institutions must provide sufficient protection from outside elements, have adequate teaching materials, trained teachers, safe drinking water, and sanitation facilities.
2. **Accessibility:** Educational institutions and programmes must be made physically and economically accessible to all without discrimination, also implying physical and economic accessibility. Part of this includes making schools affordable and either accessible via modern technology or located within a safe physical distance that students can reach.
3. **Acceptability:** the form and substance of education, including curricula and teaching methods, has to be relevant, culturally appropriate and of good quality.
4. **Adaptability:** education requires schools to be flexible so that they can respond to the needs of students within their specific social and cultural context and accommodate different learning styles.

This four “A” scheme is a useful device to analyse the content of the right to receive an education, as well as the general obligations for a State Party resulting from it⁴.

The right to equality and non-discrimination is recognised in Article 2 of UDHR and is a cross-cutting issue of concern in different UN human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR, art. 26), the International Covenant on Economic Social and Cultural Rights (art. 2) and the Convention on the Rights of the Child (art. 2). Other treaties applicable to specific groups (ethnic minorities, women, persons with disabilities, refugees and migrants) or in specific contexts require from the States to provide education without discrimination. Amongst these UN instruments, there are the Convention relating to the Status of Refugees (1951, art. 22), the Convention on the Elimination of All Forms of Racial Discrimination

³ CESCR, *General Comment No. 13: The Right to Education*, UN Doc. E/C.12/1999/10, 8 December 1999, paras. 6, 7. See also UN Commission on Human Rights, *Preliminary Report of the Special Rapporteur on the Right to Education*, UN Doc. E/CN.4/1999/49, 13 January 1999, (by Katarina Tomasevski); paras. 51–74.

⁴ See CRC, art. 2 ; CESCR, *General Comment No. 13: The Right to Education*, UN Doc. E/C.12/1999/10, 8 December 1999, para. 31

(1975, art. 5 and 7), the Convention on the Elimination of All Forms of Discrimination against Women (1979, art. 10), the Convention on the Protection of the Rights of All Migrant Workers and Members of their families (1990, art. 30, art. 43-1, 45-1, 12-4) and the Convention on the Rights of Persons with Disabilities (CRPD, 2006, art. 24)⁵. The right to education has also been recognised in various ILO Conventions.

Human rights instruments prohibit discrimination on several grounds. UDHR, ICESCR and ICCPR cover 10 prohibited grounds: race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth and other status. This list of prohibited grounds is however merely illustrative and not exhaustive. The term «other status» has an open-ended meaning and therefore discrimination based on age, gender, disability, state of health, nationality and sexual orientation, gender identity, place of residence may be prohibited within the meaning of these provisions.

Beyond non-discrimination, the right to inclusive education is a right that has been increasingly recognised in international law⁶. It entails the right to education of every individual, regardless of individual differences, within the regular education system and the right of children with special educational needs to receive whatever extra support they may require to ensure their effective education. This dynamic approach “seeks to address the learning needs of all [...] with a specific focus on those who are vulnerable to marginalisation and exclusion”⁷. In this respect, individual differences are not seen as problems, but as opportunities for enriching learning”⁸. The right to inclusive education encompasses a transformation in culture, policy and practice in all formal and informal educational environments to accommodate the differing requirements and identities of individual pupils and students, together with a commitment to remove the barriers that impede that possibility.

While CRC urges States to extend assistance to ensure that individuals with disabilities have effective access to education, to the extent State resources allow it (art. 23), CRPD is the first legally binding instrument referring to inclusive education. It requires States to ensure that people with disabilities «can access an inclusive, quality and free primary education and secondary education on an equal basis with others».

According to article 24(2) of CRPD, State parties shall ensure that:

- ▶ persons with disabilities are not excluded from the general education system on the basis of disability;
- ▶ reasonable accommodation of the individual’s requirements is provided;
- ▶ effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

State parties shall take appropriate measures, including:

- ▶ facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

⁵ For a complete overview, refer to http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_International_Instruments_Right_to_Education_2014.pdf

⁶ The World Conference on Special Needs Education in June 1994 is considered to be the impetus for inclusive education worldwide. The Salamanca Statement on Principles, Policies and Practice in Special Needs Education emerged from the 1994 World Conference represents a worldwide consensus on future directions for the education of children with special needs. <http://unesdoc.unesco.org/images/0009/000984/098427eo.pdf>

⁷ UNESCO, *Overcoming Exclusion through Inclusive Approaches in Education: A Challenge and a Vision*, Conceptual Paper, 2003, 4.

⁸ UNESCO, *Guidelines for Inclusion: Ensuring Access to Education for All*, 2005, 12

- ▶ facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
- ▶ ensuring that the education of persons, and in particular children, who are blind, deaf or deaf and blind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development. (art. 24(3)).

To help ensure the realization of this right, State parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities (art. 24(4)).

Besides, to ensure enjoyment of the right of persons with disabilities to education, accessibility must, therefore, be addressed broadly, in relation to, for example, entranceways to buildings and classrooms, appropriate seating, restroom facilities, and transportation to the educational facility (art. 9).

In addition, the denial of reasonable accommodation to a disabled pupil constitutes discrimination. It shall be understood as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case”– which persons with disabilities are entitled to expect in order to ensure “the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”(art. 2).

CRPD has been ratified by almost all the European countries as well as the European Union.

II. THE EUROPEAN STANDARDS

A. EU Law

The EU Charter of Fundamental Rights contains a prohibition of discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. The Charter binds the institutions of the European Union, but also apply to the Member States when they are interpreting and applying EU law.

According to Treaty on the Functioning of the European Union, “In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation ”(art. 10).

For historical reasons, EU anti-discrimination legislation essentially refer to employment discrimination, which is the most developed area of European social policy. The Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive)⁹ is thus the only text prohibiting racial and ethnic discrimination within the field of education in itself. So far, there is no case-law of the European Court of Justice interpreting the Directive with reference to education.

⁹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, *OJ L 180, 19/07/2000 p. 22*

The Treaty on the Functioning of the European Union (art. 45), the Recast Directive on gender discrimination (2006/54)¹⁰ and the Employment Equality Directive (2000/78)¹¹ respectively prohibit discrimination on the basis of nationality, gender, sexual orientation, religious belief, age and disability in the area of employment. Education is not covered but only vocational training. Vocational training has been defined by the European Court of Justice as “enabling every person to acquire the technical knowledge and skill necessary to pursue a given occupation and to reach the highest possible level of training, whilst encouraging, particularly as regards young persons, intellectual and physical advancement, civic education and physical development”¹².

The Republic of Moldova is the only country that has a distinct chapter on child rights in its Association Agreement with the European Union. According to the EU-Moldova Association Agreement, the parties agree to cooperate in ensuring the promotion of the rights of the child (art. 137). Such cooperation shall include exchange of information and best practices on the alleviation of poverty among children, including on measures to focus social policies on children’s well-being, and to promote and facilitate children’s access to education as well as the implementation of measures aimed at promoting children’s rights within the family and institutions, and strengthening the capacity of parents and carers in order to ensure child development” (art. 138)¹³.

At European Union level, there are also numerous non-binding statements on children with disabilities’ education but there is no express legally binding requirement on EU Member States to have inclusive education. For example, in March 2018, the European Council adopted a Recommendation on common values, inclusive education and the European dimension of teaching¹⁴.

B. The Council of Europe Conventions

The prohibition on discrimination is enshrined in Article 14 of **the European Convention of Human Rights (ECHR)**, which guarantees equal treatment in the enjoyment of the other rights set down in the Convention and in its Protocols. It covers any ground “such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”. The open-ended list of protected grounds has been construed in a broad sense by the European Court of Human Rights to cover grounds such as disability, state of health, sexual orientation, gender identity etc.

The first sentence of Article 2 of Protocol No. 1 guarantees an individual right to education. In spite of its importance, the right to education is not, however, absolute. It may be subject to limitations. However, “any restrictions must not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness”. They must be foreseeable for those concerned and pursue a legitimate aim, although there is no exhaustive list of “legitimate aims” under Article 2 of Protocol No. 1¹⁵.

¹⁰ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), *OJ L 204*, 26.7.2006, p. 23

¹¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, *OJ L 303*, 2.12.2000, p. 16

¹² ECJ 13 February 1985 *Gravier v. Ville de Liège*, aff. 293/83; see also ECJ 1 July 2004 *European Commission v. Belgium*, aff. C-65/03 ; ECJ 7 July 2005 *European Commission v. Austria*, aff. C- 147/03

¹³ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.260.01.0004.01.ENG&toc=OJ:L:2014:260:TOC

¹⁴ [https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1528379535771&uri=CELEX:32018H0607\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1528379535771&uri=CELEX:32018H0607(01))

¹⁵ ECHR 10 November 2005 *Leyla Şahin v. Turkey*, no. 44774/98, § 154

The second paragraph of Article 2 also guarantees the right of parents to have their children educated in conformity with their religious and philosophical convictions. It applies to all subjects and not only religious instruction. Sexual education and ethics thus fall within the scope of Article 2 of Protocol No. 1¹⁶. Moreover, the provision applies to both the content of the teaching and the way it is provided.

Protocol No.12 (2000) to the ECHR, not yet ratified by all European Member States, expands the scope of the prohibition of discrimination by guaranteeing equal treatment in the enjoyment of any right (including rights under national law). According to the Explanatory Report to the Protocol, it was created out of a desire to strengthen protection against discrimination which was considered to form a core element of guaranteeing human rights.

Article E of the **Revised Social Charter** draws its inspiration from Article 14 of the ECHR. It takes up the principle of non-discrimination which was set forth in the Preamble of the Social Charter of 1961 and incorporates it into the main body of the Revised Charter. The Charter also contains a positive right to education, in Article 17. States should take "all appropriate and necessary measures" to provide children and young people with "a free primary and secondary education as well as to encourage regular attendance at school". Article 17 of the Revised Charter also guarantees that equal access to education must be ensured for all children. In this respect particular attention should be paid to vulnerable groups such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty, children with disabilities, etc. Where necessary, special measures should be taken to ensure equal access to education for these children. Article 10 guarantees that equal access to vocational training, including higher education, apprenticeship and continuing training, must be ensured. Article 15 specifically guarantees the right of persons with disabilities to education and to participation in the life of the community.

Additional protection against discrimination can be found in **the Framework Convention for the Protection of National Minorities**. Article 4(1) of the Convention enshrines the fundamental principles of non-discrimination and equality. Parties to the Framework Convention undertake to promote full and effective equality of persons belonging to minorities in all areas of economic, social, political, public and cultural life together with conditions that will allow them to express, preserve and develop their culture, religion, language and traditions. Article 4(2) makes it clear that a State's obligations may also require affirmative action on the part of the government and not merely abstention from discrimination. States are to adopt, "where necessary", measures to promote "full and effective equality between persons belonging to a national minority and those belonging to the majority" taking "due account of the specific conditions" of national minorities. The Convention also provides guidelines for their linguistic freedom and rights regarding education. According to its Article 14(1), the Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language¹⁷.

The **European Charter for Regional or Minority Languages** also obligates the State parties to make available education at all level in the relevant regional or minority languages and to make arrangements to ensure the teaching of the history and the culture which is reflected by the regional or minority language (art. 8).

¹⁶ ECHR 25 May 2000 *Jimenez Alonso and Jimenez Merino v. Spain; Dojanand Others v. Germany* (dec.), no.51188/99, ECHR 6 Octobre 2009 *Appel-Irrgang and Others v. Germany* (dec.), no. 45216/07

¹⁷ See also European Charter for Regional or Minority Languages, which focuses on protection and promotion of minority languages

C. Selected European Court of Human Rights and European Committee of Social Rights's Case-law¹⁸

1. Ethnicity

The ECtHR has addressed the difficulties relating to the education of Roma children since its first landmark *D.H. and Others v. the Czech Republic* case¹⁹. It ruled that the States are under a positive obligation to take effective measures against segregation²⁰.

The *D.H.* case involved complaints by Roma applicants that their average/above average intellect children were excluded from the mainstream education system and placed in "special" schools intended for those with learning difficulties. The allocation of Roma children to these schools was based on the use of biased tests: they were designed to test intellectual capacity but were not adapted to people of their ethnic origin. Statistical evidence showed the particularly high proportion of Roma pupils placed in these schools. The Court acknowledged indirect discrimination in violation of Article 14 (prohibition of discrimination) of the Convention taken in conjunction with Article 2 (right to education) of Protocol No. 1.

The Grand Chamber of the European Court of Human Rights (ECHR) held in the case *Oršuš and Others v. Croatia*²¹ that the segregation of Roma children into separate classes was discriminatory and in violation of Article 14 (prohibition of discrimination) of the Convention taken in conjunction with Article 2 (right to education) of Protocol No. 1. It involved 14 children attending mainstream primary schools but placed in segregated Roma-only classes due to alleged language difficulties. Only Roma children had been placed in the special classes in the schools concerned. The Croatian Government attributed the separation to language difficulties of the pupils. However, no legislation at the time provided a legal basis for such separate classes, the tests determining the placement in such classes focused less on the language proficiency than on the general psycho-physical condition, the educational programme subsequently followed did not target language problems, and eventually there were no transparent and clear criteria, or a monitoring mechanism for reviewing the duration of the placement of children to Roma-only classes, leaving room for arbitrary decisions²².

2. Nationality

The right to education does not grant a right for an alien to enter or stay in a given country²³.

The *Ponomaryovi v. Bulgaria* case²⁴ concerned two Russian teenagers who were living in Bulgaria and were excluded from secondary education. They were required to pay school fees, whereas school enrolment was free of charge for Bulgarian nationals and for certain categories of foreigners such as holders of a permanent residence permit and minor children of EU migrant workers. The European Court of Human Rights found that Bulgaria had discriminated against the applicants on the grounds of their nationality and immigration status and had violated Article

¹⁸ For a more extensive overview, please refer to https://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf; https://www.echr.coe.int/Documents/FS_Disabled_ENG.pdf
https://www.echr.coe.int/Documents/FS_Roma_ENG.pdf
https://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf

¹⁹ ECHR [GC] 21 November *D.H. and others v. the Czech Republic*, no. 57325/00

²⁰ See also ECHR 30 May 2013 *Lavida and Others v. Greece*, no. 7973/10, § 73

²¹ ECHR [GC] 16 March 2010 *Oršuš and Others v. Croatia*, no. 15766/03

²² See also *Sampanis and Others v. Greece*, 5 June 2008, no. 32526/05 ; *Sampanis and Others v. Greece*, 11 December 2012, no. 59608 ; *Horváth and Kiss v. Hungary*, 29 January 2013, no. 11146/11 ; *Lavida and Others v. Greece*, 28 May 2013, no. 11146/11

²³ *15 Foreign Students v. the United Kingdom*, Commission decision, 19 May 1977, no.7671/76, Decisions and reports(DR)9, § 4

²⁴ ECHR 28 November 2011 *Ponomaryovi v. Bulgaria*, no. 5335/05

14 in conjunction with Article 2 of Protocol No.1. The Court stated that the right to education concerns a public service of a very specific nature which benefits not only users but more broadly society as a whole, whose democratic dimension involves the integration of minorities. If States may restrict access to “resource-hungry public services” by short term and illegal immigrants, they may have legitimate reasons for curtailing the use of such services up to a point in the field of education. The State’s margin of appreciation increases with the level of education, in inverse proportion to the importance of that education for those concerned and for society at large.

3. Language

Article 2 of Protocol No. 1 does not specify the language in which education must be conducted in order that the right to education should be respected. The Court therefore excluded the right to obtain education in the language of one’s choice. However the right to education would be meaningless if it did not imply the right to be educated in the national language or in one of the national languages, as the case may be²⁵.

The Court found a violation of Article 2 of Protocol No. 1 in *Cyprus v. Turkey*²⁶ as no Greek-language secondary-school facilities were available to Greek Cypriots living in Northern Cyprus, after completion of their primary schooling in Greek language.

In the case of *Catan and Others v. the Republic of Moldova and Russia*²⁷, the Grand Chamber reiterated that there was a right to receive education in a national language and emphasised the fundamental importance of primary and secondary education for each child’s personal development and future success. Russia was convicted under Art. 2 of Protocol 1, after complaints coming from parents and children living in the Republic of Moldova’s secessionist region of Transnistria related to the effects of the language policy adopted in 1992 and 1994 by the self-established region. They prohibited the use of the Latin alphabet in schools, as well as appealed to forcible eviction of teachers and students from Latin-script schools. Measures of harassment also followed their reopening.

The temporary expulsion of students who had asked the university administration to introduce optional classes in the Kurdish language also constitutes a violation²⁸.

Temporary placement of children in a separate class on the ground that they lack an adequate command of the language is not, as such, automatically in breach of Article 14²⁹.

4. Disability

The *Çam v. Turkey* case³⁰ concerned the refusal to enrol the applicant who was completely qualified for admission to the academy as a student at the Turkish National Music Academy on the sole basis that she was blind. The Court held that there had been a violation of Article 14 (prohibition of discrimination) of the Convention taken in conjunction with Article 2 (right to education) of Protocol No. 1. The Court considered that the discrimination on grounds of disability also extended to the refusal to make reasonable accommodation to facilitate access by persons with disabilities to musical education, stating that such accommodation is vital for the exercise of human rights. In this case, the Court also acknowledged the existence of an emerging consensus

²⁵ Belgian linguistic case, ECHR 23 July 1968 [GC], *Case “relating to certain aspects of the laws on the use of languages in education in Belgium”* (merits), § 3, Series A no. 6

²⁶ ECHR 10 May 2001 [GC], *Cyprus v. Turkey*, no. 25781/94, ECHR 2001-IV

²⁷ ECHR [GC] 19 October 2012, *Catan and Others v. the Republic of Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06

²⁸ ECHR 3 March 2009, *İrfan Temel and Others v. Turkey*, no. 36458/02 ; ECHR 12 December 2017, *Çölgeçen and Others v. Turkey*, nos. 50124/07, 53082/07, 53865/07, 399/08, 776/08, 1931/08, 2213/08, and 2953/08

²⁹ *Oršuš and Others v. Croatia* [GC], *abovementioned*, § 157

³⁰ EHCR 23 February 2016, *Çam v. Turkey*, no. 51500/08

about the importance of the fundamental principles of universality and non-discrimination in the exercise of the right to education. It has further explained that inclusive education has been recognised as the most appropriate means to guarantee those fundamental principles and that Article 14 of the Convention must be read in the light of the requirements of those instruments as regards reasonable accommodation.

The case of *Enver Şahin v. Turkey*³¹ raised the issue of access to university premises, as the applicant had become paraplegic during his studies. The Court noted that the university authorities had not simply denied access to the applicant but had told him that the necessary adaptation work could not be carried out in the short term because of insufficient funds. In spite of the margin of appreciation afforded to the national authorities in such matters, the Court did not find it acceptable that the accessibility issue had remained pending until all the funds had been obtained for the completion of the whole series of development work imposed by law. As to the proposal to provide personal assistance, the Court found that in the absence of any individual assessment of the applicant's actual situation, such a measure could not be considered reasonable in terms of guaranteeing personal autonomy, as secured under Article 8, because it would disregard his need to live independently and autonomously as much as possible. It thus found a violation of Article 14 taken together with Article 2 of Protocol No. 1.

5. Religion

In public schools, the State is not obligated to accede to parents' requests to remove their children from compulsory secular ethics classes that do not align with their religious sentiments as long as the classes are presented in a neutral manner. The European Court of Human Rights stated that the right to education does not entail "a right not to be exposed to convictions contrary to one's own"³².

Additionally, there is nothing to prevent mandatory sex education classes. All students shall attend them, even those whose religious faiths preclude them from engaging in sexual behavior³³. As long as the course sought to provide students with accurate information, it does not attempt to indoctrinate students and does not affect parents' rights to advise their children differently³⁴.

In the case of *Osmanoğlu and Kocabaş v. Switzerland*³⁵, the Court ruled that the refusal to exempt two Muslim pupils from compulsory mixed swimming lessons complied with Article 9 (right to freedom of thought, conscience and religion) of the European Convention on Human Rights. The Court underlined that school plays a special role in the process of social integration of children of foreign origin are concerned. It thus observed that the children's interest in a full education, facilitating their successful social integration according to local customs and mores, took precedence over the parents' wish and that the children's interest in attending swimming lessons was not just to learn to swim, but above all to take part in that activity with all the other pupils, with no exception on account of the children's origin or their parents' religious or philosophical convictions. The Court also noted in this case that the authorities had offered the applicants very flexible arrangements to reduce the impact of the children's attendance at mixed swimming classes on their parents' religious convictions, such as allowing the wearing of a burkini.

In *INTERRIGHTS v. Croatia* case³⁶, the European Committee of Social Rights (ECSR) held that Croatia violated Article 11(2) of the European Social Charter (requiring States to provide educational

³¹ ECHR 30 January 2018, *Enver Şahin v. Turkey*, no. 23065/12

³² ECHR 6 October 2009, *Appel-Irrgang v. Germany*, no. 45216/07

³³ ECHR 7 December 1976, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, nos. 5095/71, 5920/72, 5926/72

³⁴ See *Id.* at paras. 49–55.

³⁵ ECHR 30 March 2017, *Osmanoğlu and Kocabaş v. Switzerland*, no 29086/12

³⁶ Complaint No. 45/2007, Merits, 30 March 2009, paras. 48, 66

facilities for the promotion of health) in conjunction with its article E because the sexual education curriculums used to provide health education contained discriminatory statements against homosexuals. The Committee added that education should “not be used as a tool for reinforcing demeaning stereotypes and perpetuating forms of prejudice which contribute to the social exclusion of historically marginalized groups and others that face embedded discrimination”.

In accordance with settled case-law, the Committee underlines that the Charter does not leave States Parties a wide margin of appreciation when it comes to choosing the type of school in which they will promote the independence, integration and participation of persons with disabilities, as this must clearly be a mainstream school. The margin of appreciation applies only to the means that states deem most appropriate to ensure that this assistance is provided.

The ECSC considered that the right to education of autistic children and children with mental illness was violated in a certain number of cases³⁷. For example, in a case against France, the Committee concluded that the government had failed to achieve sufficient progress in advancing the education of persons with autism, noting that the proportion of autistic children receiving education was much lower than other students, and that there was a “chronic shortage” of support facilities for autistic adults³⁸. The European Committee decided that States have an affirmative obligation to take practical steps to ensure that children with disabilities receive an effective education, and these steps must be taken “within a reasonable time, with measurable progress, and to an extent consistent with the maximum use of available resources”.

More recently, the European Committee of Social Rights has found Belgium in breach of the articles 15 par. 1 and 17 of the (revised) European Social Charter³⁹. In Flanders, the vast majority of children with intellectual disabilities (between 75 to 85%) were educated in special schools. According to the Flemish legislation (the “M-Decree”), the access to mainstream education was open only for the children who were able to follow the common-core curriculum, thereby excluding those with intellectual disabilities. Moreover, around 1,000 disabled children with ‘very complex problems’ were exempted from education altogether. Last but not least, most school buildings were not accessible (only 9.9% of schools were fully accessible and 20.3% of schools sufficiently accessible) and were not equipped to deal with a diverse range of pupils.

The Committee considered that the eligibility requirements for admission to mainstream education according to the M-Decree, were based on the notion of “integration” rather than “inclusion”⁴⁰. As the Flemish government did not provide any objective and reasonable justification of the situation, the Committee concluded that its education system, failing to make any reasonable accommodation, was discriminatory on grounds of intellectual disability. Moreover, it held that all persons with disabilities have the right to guidance, education and vocational training, even if this is not provided in the form of formal schooling. “The onus is on the Government to provide information on the form of education that is provided to such children, whether in the context of day-centres and in institutions or otherwise”. In the absence of such information, the Committee concluded that this group of children was discriminated against on the basis of their severe disability.

³⁷ ECSR 7 December 2003 *International Association Autism-Europe v. France*, no. 13/2002 ; ECSR 3 June 2008 *Mental Disability Advocacy Center v. Bulgaria*, 41/2007

³⁸ ECSR 4 November 2003 *International Association Autism-Europe (IAAE) v. France*, no. 13/2002 ; See also ECSR 11 September 2013 *Action européenne des handicapés (AEH) v. France*, no. 81/2012

³⁹ ECSR 16 October 2017 *Mental Disability Advocacy Center (MDAC) v. Belgium*, no. 109/2014

⁴⁰ There is « integration when pupils are required to fit the mainstream system, whereas inclusion is about the child’s right to participate in mainstream school and the school’s obligation to accept the child taking account of the best interests of the child as well as their abilities and educational needs as a primary consideration ».

Chapter II

BEST PRACTICES IN EUROPE

According to article 30 of the European Social Charter, the State parties undertake to take measures to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, education.

This chapter provides an overview of the several initiatives taken in various European countries to address inclusive education. It is by no means comprehensive and exhaustive. More information may be found through the European Agency for Special Needs and Inclusive Education⁴¹, the online compendium of good practices⁴² set up by the European Commission and also online collaborative platforms⁴³ funded by the European Commission bringing education and training professionals together⁴⁴.

The European Agency for Special Needs and Inclusive Education is an independent organisation acting as a platform for collaboration for the ministries of education supported by 31 European countries and the European Institutions (Commission and Parliament). Its main aim is to help them improve their educational policy and practice by combining the perspectives of policy, practice and research in order to provide member countries and stakeholders at the European level with evidence-based information and guidance on implementing inclusive education. The Agency's website provides for national contacts, description of the country's system for inclusive education, publications⁴⁵, data, projects, etc⁴⁶. This European Agency and UNESCO have also launched "the Inclusive Education in Action: Empowering Teachers: Empowering Learners" website⁴⁷. It forms part of the UNESCO knowledge-base on inclusive teaching and learning and provide online materials with a particular focus on teacher education policy and practice.

Another source of information may be found through the Joint EU-CoE Project "Regional Support for Inclusive Education" that was implemented in Albania, Bosnia and Herzegovina, Croatia,

⁴¹ See in particular European Agency for Special Needs and Inclusive Education, 2017. Raising the Achievement of All Learners in Inclusive Education: Lessons from European Policy and Practice. (A. Kefallinou and V.J. Donnelly, eds.). Odense, Denmark ; See also the Eurydice network which supports and facilitates European cooperation in the field of lifelong learning by providing information on education systems and policies in 38 countries and by producing studies on issues common to European education systems ; https://eacea.ec.europa.eu/national-policies/eurydice/home_en

⁴² delivered by an expert working group on promoting citizenship and common values ; <https://ec.europa.eu/education/compendium>

⁴³ The platforms are spaces where education and training professionals can share ideas and experiences, learn new approaches or techniques from their peers and discuss big challenges faced by their colleagues around Europe ; https://ec.europa.eu/education/initiatives/collaborative-platforms_en

⁴⁴ See also European Network on Inclusive Education and Disability, Includ-ed (2012), Inclusive education and disability: Good practices from around Europe, P.A.U. Education and Barcelona, available at http://www.includ-ed.eu/sites/default/files/documents/inclusive_education_disability_good_practices_from_around_europe.pdf. For information in Spanish on the project, <http://www.fundacionrepsol.com/es/areas-actuacion/formacion-sin-limites>.

⁴⁵ For example, it published a report relating to "case study of approaches to training and support for inclusive teacher practice" in order to empower teachers to promote inclusive education; <https://www.european-agency.org/sites/default/files/Empowering%20Teachers%20to%20Promote%20Inclusive%20Education.%20A%20case%20study.pdf>

⁴⁶ <https://www.european-agency.org/>

⁴⁷ <http://www.inclusive-education-in-action.org/#top>

Montenegro, Serbia, the former Yugoslav Republic of Macedonia and Kosovo⁴⁸. This 3-year project aimed to enhance social inclusion and cohesion in the South East Europe region by promoting the concept of inclusive education as a reform principle promoting diversity, in line with the beneficiaries' commitments to Council of Europe standards and EU accession. It helped 49 schools across these countries to develop inclusive cultures, policies and practices through awareness-raising, mutual learning and capacity-building measures.

I. AUSTRIA

Several legislative initiatives and reforms address inclusive education:

- ▶ The reform of primary education (2016) improves the system's equity regardless of first language, level of development and SEN;
- ▶ The guidelines for monitoring inclusive quality (2016) offer standards for inclusive classroom practice, teaching and school development;
- ▶ The reform of teacher education mentions inclusion as mandatory content in the curriculum for all student teachers. The College for Nursery Education has thus adapted the curriculum to raise awareness of the students about diversity. The University of Education also adopted the curriculum to raise the teachers' diversity competence for the work in multilingual and cultural heterogeneous classes;
- ▶ The reform of secondary education (2012) mentions support to various talents in heterogeneous classes, the different complexity of tasks and goals, internal differentiation, team-teaching, etc.

To include Roma children, there are **pre-school language support programs for all kindergartens**.

Tutoring programs to learn German language and Romani are provided at school. Some regional classes employ additional teachers to teach in the children's mothertongue. Some NGOs and sometimes even the school itself offer additional tutoring for children with special educational needs. Some schools have special school mediation, psychological help and educational advice provided by Roma mediators for Roma children. Moreover, the Austrian educational system combats discrimination notably by including an anti-racism-awareness program in the schedule of the subject "Political Education".

At University the NGO *Roma at university* supports and connects all Roma people who are studying at university.

II. BELGIUM

UNIA, the Interfederal Centre for Equal Opportunities in Belgium, published a general brochure about reasonable accommodation in school⁴⁹ and provided for recommendations relating to inclusive education in Flanders⁵⁰.

⁴⁸ Catalogue of school projects on inclusive education in South-East Europe, Council of Europe, 2015; <https://pjp-eu.coe.int/documents/1473702/8927135/Catalogue+of+School+Projects+on+Inclusive+Education+FINAL+PDF.pdf/9821c4b7-e7b0-4b54-b505-5fa65fc6562b>

⁴⁹ <https://www.unia.be/fr/articles/unia-explique-dans-une-brochure-ce-que-sont-les-amenagements-raisonnables-dans-lenseignement>; It also led a campaign by and for persons with disabilities, in the context of the 10 years of the UN Convention ; <http://unia.be/en/awareness-prevention/campaigns/i-have-rights>

⁵⁰ <https://www.unia.be/fr/legislation-et-recommandations/recommandations-dunia/recommandations-dunia-sur-lenseignement-inclusif-flamand>

Pedagogical services and universities support the school team through a professional development programme on the Decree regarding measures for pupils with special educational needs (the 'M-decree'). The programme aims to develop more inclusive schools in partnership with all local stakeholders (i.e. parents, pupils, pupil guidance centres, pedagogical counselling services, special education teachers and other experts). Tutoring is used to professionalise and broaden staff competencies. In each of the 60 participating schools, a core team of 5 to 10 professionals focuses on inclusive pedagogy and inclusive school policy and promotes strategies such as collaborative team practice, coaching and inclusive leadership.

The *Welcoming education for non-Dutch speaking children policy* (2016) also provides additional teaching hours for non-Dutch speaking learners in primary and secondary education.

In 2018, UNIA published a survey on Roma inclusive education⁵¹ with recent and documented data and provided for recommendations.

III. CZECH REPUBLIC

The Fair school project is organized by a Czech NGO, *the League of Human Rights*. The aim of the project is to promote fair and quality education for all children, with special focus on inclusive education. As part of the project, the NGO created "Fair school standards", a set of criteria for a good and inclusive school, and certifies the schools that fulfill them. Additionally, the NGO also offers courses for school principals, workshops for teachers and parents and educational materials for teachers, all emphasizing the importance of inclusive and non-discriminatory education⁵².

In Trmice, the school emphasizes the importance of regular attendance as part of the preventive measures against exclusion, so it runs a project to maximize the school attendance of all children by awarding benefits to children who do not often miss out on classes. In Krnov, the school focuses on helping the children who for any reason cannot keep up with the schoolwork. Thus, the school provides the children in need with extra tutoring besides the regular classes.

Several projects currently help to provide **free school meals** to children whose parents otherwise could not afford to pay for them. The projects' goal is to ensure that every child gets the chance to eat lunch at school, so they can fully participate in classes without feeling hungry. Two projects are run by the Ministry of Education and the Ministry of Labour and Social Affairs which subsidize school meals for children that come from socio-economically disadvantaged backgrounds. Another project, governed by an NGO, *Women for women*, raises money for the same purpose from private funds and individual contributions⁵³.

Some NGOs (e.g. *Vzájemné soužití o.p.s.*) offer **preparatory tutoring for children from socio-economically disadvantaged backgrounds** before they enroll at an elementary school. That helps them to get to the same starting line as the children from the more affluent families, so the differences between children are reduced. Thanks to volunteers, NGOs also often offer free or discounted tutoring for children who cannot keep up at school.

⁵¹ <https://www.unia.be/fr/legislation-et-recommandations/recommandations-dunia/participation-a-lenseignement-des-enfants-des-gens-du-voyage-en-belgique>; https://www.unia.be/files/Documenten/Aanbevelingen-advies/Participation_%C3%A0_lenseignement_des_Gens_du_voyage.pdf

⁵² All kinds of activities and projects concerning inclusive education are governed by Czech Society for Inclusive Education; <https://cosiv.cz/en/>

⁵³ see more information at <http://www.obedyprodeti.cz/en/our-campaign>

The Week for inclusion campaign organized by an NGO (*Rytmus – od klienta občianovi o.p.s.*) aims to promote inclusive education of all children. For a week, all kinds of organizations (schools, universities, NGOs, public institutions etc.) are encouraged to get involved and organize any events and activities related to the topic of inclusive education.

In 2017 and 2018, the Public Defender of Rights issued two **comprehensive recommendations** concerning equal access to preschool education and compulsory school education⁵⁴.

IV. FINLAND

Finland as well as Denmark, unlike most countries, do not have specific legislation regarding the education of learners with special educational needs or disabilities. Instead, general legislation highlights that teaching should be accessible to all. It must be organised and performed with consideration for learners' different needs.

The Finnish government has implemented a national higher education accessibility project (abbreviated as ESOK in Finnish)⁵⁵, from 2006 to 2011, with the objective of promoting barrier-free learning and equal opportunities in higher education institutions for students with disabilities, illnesses or learning difficulties, and those belonging to a linguistic and cultural minority. The project was first facilitated by the Finnish Ministry of Education and was further developed by 30 representatives of universities and organisations, as well as individuals. The project seeks to promote physical, psychological, and social accessibility in teaching and learning in Finnish higher education institutions so that everyone has the same right and access to study regardless of one's characteristics.

ESOK drafted, issued and disseminated a recommendation guide dealing with student recruitment, accessible entrance exam design, accessibility in entrance exams and evaluation, development of barrier-free student selection, accessibility in studying and legislation, and consideration of individual needs and tools.

V. FRANCE

In France, schooling is mandatory for all children between the ages of 6 and 16, whether a child is French or foreign-born, regardless of his/her period of residence in the country and regardless of his/her regular status. About 98% of three-year-olds attend nursery schools until primary school starts. By 2019, France will make school **compulsory from 3 years old**, because the earlier children are in class, the higher their chances of success and integration in society.

In compliance with the Education Code, **deaf pupils have the right to bilingual education** (in French and French Sign Language) if their parents request it. The Act of 11 February 2005 on equal rights and opportunities, participation and citizenship of persons with disabilities has resulted in appreciable advances in the schooling of young deaf persons. French Sign Language is recognized as a language in its own right. All pupils concerned (e.g. deaf children and their siblings) have the right to receive French Sign Language instruction, and this language can be chosen as an optional subject for exams and competitive examinations, including in vocational training. French Sign Language has been offered at primary schools since the beginning of

⁵⁴ https://ochrance.cz/fileadmin/user_upload/ESO/25-2017-DIS-JMK_Recommendations_of_the_Public_Defender_of_Rights_on_equal_access_to_preschool_education.pdf
https://www.ochrance.cz/fileadmin/user_upload/ESO/14-2017-DIS-VB-recommendation-EN.pdf

⁵⁵ <http://www.esok.fi/esok-hanke/esittely/en>

the 2008 academic year and at middle and secondary schools since the beginning of the 2009 school year. In addition, since 2008, it has been a baccalaureate exam option for all deaf and hearing students. A secondary-school teaching diploma in French Sign Language was created in 2010.

Decree No. 2005-1617 of 21 December 2005 provides for **arrangements for candidates with disabilities during exams and competitive examinations**. They may take the form of extra time, examination secretaries, specific Braille equipment (personal) or microcomputers, test items and exam subjects in Braille, sign language interpreters etc. In 2017, 40,907 students benefited from such measures.

The Ministry of National Education has been actively supporting the development and dissemination of digital resources for education for use innovative and pedagogically-driven digital teaching practice. Within the framework of the Accessibility and Adaptability of Digital Resources for Schools (*Accessibilité et adaptabilité des ressources numériques pour l'École -A2RNE*)⁵⁶, the French Ministry of Education published recommendations to authors and publishers to help them **produce digital resources accessible** from the very first steps of their design or embedding functionalities that meet the needs of students with disabilities, including students with Dys-type problems.

A disability helpline: The telephone helpline *Aide Handicap Ecole* (School Disability Help) handles many files submitted by families and offers solutions in cooperation with local education authorities and school inspectorates.

VI. GERMANY

FADA, the Equality Body in Germany, has launched a project to engage key stakeholders (teachers, headschools, school administration, parents etc) in non-discriminatory education. The **Guidance book entitled *Identifying and avoiding discrimination in schools***⁵⁷ provides information about specific discrimination risks in education and their effects on the victims. It explains the legal framework applicable in the education sector and how schools can implement anti-discrimination concepts. One important part of the guide is a broad selection of projects, partners, literature and websites which can provide further information and support. The guide uses a cross-cutting approach by referring to various grounds for discrimination (race or ethnic origin, gender, religion or belief, disability, age, sexual orientation and social background).

In 2017 and 2018, FADA conducted a competition for schools fighting discrimination with internal projects. The **competition *fair@school*** was implemented in cooperation with one of the leading publisher's for educational media in Germany (*Cornelsen Verlag*) and the Center for Diversity, Democracy and Inclusion in Education at the University of Hildesheim. Through this competition, FADA gave an award to exemplary good practice school projects which engage in avoiding discrimination and promote equality. The best three projects won a EUR 3,000 prize.

FADA also implemented **workshops entitled *Non-discriminatory school books*** with two leading publisher's for educational media in Germany to raise awareness for discrimination in school books and give advice on how to develop non-discriminatory school books.

⁵⁶ N. Terrades and E. Chibani, France, Country Report on ICT in Education, 2018; <http://www.eun.org/documents/411753/665830/Country+Report+France+2018.pdf/9da1d486-8b86-41d0-9969-4186c8c54063>

⁵⁷ http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/Literatur_Bildung/Leitfaden_Diskriminierung_an_Schulen_erkennen_u_vermeiden.pdf?__blob=publicationFile&v=4

About 600 schools in Germany provide **bilingual education**. Some of these schools provide only some lessons in a foreign language and others organize the whole school life bilingual. Some schools provide native language education for children with a migrant background to promote multilingualism. For example, the Rhineland-Palatinate State provides native language education in 16 different languages.

VII. LITHUANIA

The Faculty of Pedagogy of Vilniaus Kolegija (University of Applied Sciences) in Vilnius provides **Sign Language Interpreting study programme**. Teachers involved in this study programme promote the idea that deaf people are a linguistic minority group. For 15 years, the Lithuanian Sign Language Interpreting study programme has prepared interpreters to meet the needs of the deaf community as a linguistic minority. After completing their studies, Lithuanian Sign Language interpreters work in regional sign language interpreting centres in the 5 largest cities of the country.

The following subjects have been integrated into the **Social Work and Childhood Pedagogy study programmes** for a few years now: Basics of Lithuanian Sign Language and the Deaf Community. These subjects aim to introduce future specialists to the deaf community, its history, challenges and needs. Students learn how to react appropriately and make decisions that would not offend the dignity and independence of the hearing impaired persons. Basic language skills would also ensure simple communication when coming in contact with deaf persons.

Regarding Roma inclusion, the **day center Help to Fit**, situated in Vilnius, is located in one of the largest Roma settlement in the Baltic States which has one of the biggest school dropout rate in Lithuania.

During 6 years of the existence of the Center, 15 out of 120 children coming to the Center dropped out from school but workers at the Center managed to prevent early school leaving of 60 children who were at the high risk of early drop out. The workers at the Center involve Roma parents in their children education. In order to provide a comprehensive assistance to Roma children, the Day Center has well-developed cooperation with parents, schools, and other institutions. Relationships are based on the principle of trust and equity, which helps create a favorable climate in the Day Centre. The development of social skills and intercultural competence helps the children to establish and maintain interpersonal relationships, properly ask for help, express feelings, defend their opinions, effectively deal with conflict situations, resist negative factors, develop tolerance for other nationalities, cultures, and ethnic origins. Strengthening the Lithuanian language through various informal activities eliminates the language barrier and increases children's self-confidence, positively affects school progress, as well as increases motivation for learning. Consequently, these activities help to prevent early school leaving, reduce the exclusion of Roma children and help them to socialize positively in the society.

Special attention on intercultural and inclusive education is given in the faculty of Pedagogy. Due to that, students gain some sensitivity to human rights issues in education. For instance, this year students from Social Pedagogy study programme organized a meeting with parents from LGBT parents group for the first time ever⁵⁸.

⁵⁸ <https://pdf.viko.lt/fakultete-vyko-seminaras-apie-lgbt-vaiku-ir-ju-tevu-patiriamus-issukius/>

VIII. MONTENEGRO

The goals of the project *We have found our place under the sun* were to prevent drop-out of Roma and Egyptian pupils and other marginalised groups, to improve the primary school's working conditions, to monitor the implementation of individualised education programmes and of parents' participation and to develop teacher competences to support pupils and parents⁵⁹. The project gathered various institutions such as the Ministry of Education, the Centre for Social Work, the Local Government, representatives of Roma and Egyptian minorities, and Parent-Teacher Association to discuss and plan activities related to inclusive education and provide support to students.

The main activities provided were the following:

- ▶ Adaptation of an interactive classroom for additional and extracurricular work with students and parents;
- ▶ Training of school staff, parents and local community representatives on the concept and approaches of social inclusion;
- ▶ Engagement of two Roma Education Assistants to provide additional support to Roma students;
- ▶ Assessing socio-psychological status of pupils to provide data for activity planning and for the establishment of a support group to help pupils and their parents with individualised counselling; the establishment of a group for remedial classes through Individual Development Educational Plans;
- ▶ Regular counselling with parents of pupils who need additional support;
- ▶ Peer mediation activities to prevent bullying and promote tolerance among students;
- ▶ Inclusion of Roma pupils in the Folklore and Art section, drama troupe and art workshop to promote various cultures;
- ▶ Pre-school course for Roma children enrolling in the first grade: preparatory classes, for a period of five working days with two teaching classes a day.

IX. PORTUGAL

Portugal has been praised by the UNCRPD Committee for its enactment of Decree Law No. 3/2008, amended by Law No. 12/2008 of 12 May 2008, which is intended to ensure the implementation of the right to inclusive education for persons with special educational needs. As a result of this regulation, 98% of students with disabilities in Portugal attended regular schools in 2015⁶⁰. There are no public special education schools and no secondary special schools (private or public) in Portugal. The abovementioned decree lists the specialised supports to be provided in pre-school, primary and secondary education, in the public, private and co-operative sectors in Portugal.

In partnership with the Ministry of Education, the High Commission for Migration, Public Institute (ACM, I.P.)⁶¹ has been committed to promote the main principles of intercultural education,

⁵⁹ Catalogue of school projects on inclusive education in South-East Europe, Council of Europe, 2015; <https://pjp-eu.coe.int/documents/1473702/8927135/Catalogue+of+School+Projects+on+Inclusive+Education+FINAL+PDF.pdf/9821c4b7-e7b0-4b54-b505-5fa65fc6562b>

⁶⁰ UN Committee on the Rights of Persons with Disabilities, Concluding Observations to Portugal, UN Doc. UNCRPD/C/PRT/CO/1 (2016), para. 6(b).

⁶¹ The mission of the High Commission for Migration, Public Institute (ACM, I.P.) is to collaborate in the definition, implementation and evaluation of public policies, cross-cutting and sectorial issues on the matter of migration, to integrate immigrants and ethnic groups, in particular the Roma communities, and to manage and promote cultural, ethnic and religious diversity. ACM, I.P. also operates in combatting all forms of discrimination based on colour, nationality, ethnic origin or religion, as well as developing social inclusion programmes for immigrants' descendants.

the integration and educational success of all children and young people, from pre-school to secondary education and the education for a national, European and international citizenship which encourages diversity and ensures tolerance and respect for all cultures, languages and religious traditions. Multiple initiatives combatting racial stereotypes and prejudices were implemented in the form of campaigns, projects, trainings and awareness-raising sessions.

Since 2012, the **Intercultural School Stamp** distinguishes and publicly recognizes schools that implement strategies and actions to promote interculturality, equal opportunities and academic success of all students. Simultaneously, it identifies schools that value diversity as an opportunity and a source of learning for all. The application process for acquiring the Stamp provides schools the opportunity to assess their practices regarding intercultural education. The assessment covers practices such as: implemented procedures regarding discriminatory behaviors; the existence of a cultural and linguistic diversity diagnostic and monitoring system in the school and its relation with students' academic success; the new students welcoming practices, in specific regarding students of different nationalities or ethnicities; the value of linguistic diversity and its cultural background as a learning tool; the pedagogical methods used by teachers and curricula's critical thinking; teacher training in intercultural education; the participation of students in school initiatives' development and decision making, as well as in learning process, and the engagement strategies of the families and the wider community in the school life. Schools may receive different Stamp levels (level I, II, or III), according with the consistency of their practices.

The **Intercultural Schools Network** is a program promoted by the ACM, I.P., the Directorate-General for Education and the Aga Khan Foundation, to support schools' capacity building and sharing intercultural education good practices. The Network is made up of schools committed on promoting the welcome, integration and educational success of all children and young people, regardless of their cultural or national origins, as well as promoting a culture and practice of opening up to differences and establishing positive interactions between students and other members of the educational community who come from different cultures. Participation in the Network implies the need to:

- ▶ integrate intercultural education practices in the Education Project School and the Annual Plan of Activities in the following areas: school's culture; curricula (content, resources and didactic) and community engagement;
- ▶ provide intercultural training sessions to different actors of the educational community;
- ▶ participate in mentoring, supervision and monitoring activities and;
- ▶ share practices and resources using a collaborative platform.

In 2018, the Network comprises around 120 schools.

The **Intercultural Education Kit** is a pack of 40 publications, manuals, books, DVDs, brochures, posters and studies that are available, on request and online, to schools and other organizations or professionals. These resources cover a wide range of subjects, such as cultural and religious diversity, intercultural learning and mediation, racism, refugees, Roma communities, migrations and Human Rights. These are important tools for teachers and educational professionals who work with children and young people within the schools.

In 2016, the High Commission for Migration alongside with the Commission for Equality and Against Racial Discrimination also promoted a **national campaign** targeting children between 3 and 5 years old in the pre-school system. The concept of this campaign was to gather in a toolbox a set of 6 colour pencils with different skin tones and also a book with the story

The colours of the grey city (*“As cores da cidade cinzenta”*)⁶². This campaign invited children to colour the book and to listen and reflect about the main message of the story: a city that receives new citizens who bring with them new colours, new ideas and perspectives. All the Portuguese public schools, more than 3,500, with students until 5 years old received the pencils and the book achieving 150,000 children. The outcome has been very positive.

In 2018, the High Commission also promoted a national contest which challenged children and youngsters to produce papers relating to the fight against discrimination. Up to now, 500 proposals were submitted⁶³.

The **Choices Programme**⁶⁴ developed by the High Commission for Migration, promotes the social inclusion of children and young people from vulnerable socio-economic contexts, particularly descendants of immigrants and ethnic minorities. In this Programme, local projects are designed to match the specific needs of the concerned persons and have a strong emphasis in school support to increase academic success. A strong investment is made to combat school drop-out and academic achievement. Presently in its 6th generation (2016-2018), the Choices Programme is supporting 99 projects relating to education and professional training comprising diverse activities such as studying support, development of social and personal skills programme, and non-formal education activities to promote academic achievement.

The **Operational Programme for the Promotion of Education** (OPRE), launched in 2016, targets to encourage and promote access of young Roma to higher education. It aims to reduce existing barriers between these communities and the formal education system, as well as to prevent early school dropout in this cycle of studies. In its last edition, OPRE offered 25 university scholarships and also a capacity building programme and technical support, awareness raising and family and community mediation, as well as individual support and tutoring for the students.

X. SLOVAKIA

The project called *You also have a chance!* (Aj ty máš šancu!) consists of support for Roma high school students by providing free preparation courses for entry exams to the University of Economics in Bratislava (EUBA). It supports them by free tutoring in mathematics, statistics and English⁶⁵.

XI. SWEDEN

The UNCRPD Committee has commended Sweden for its education system, in which only 1.5% of children are instructed outside inclusive, mainstream schools⁶⁶. The principal Swedish law providing for education, the School Act (1974), is based on the philosophy that all students have the same right to personal development and learning experiences. The Act promotes inclusion in the mainstream where possible. If inclusion is not possible, then the given school must indicate very clearly why other educational options for pupils should be considered⁶⁷.

⁶² http://www.acm.gov.pt/documents/10181/167771/As+Cores+Da+Cidade+Cinzenta_BR.pdf/c740288d-4832-49ff-8cfc-75d14d9b5f9f

⁶³ <https://www.cicdr.pt/-/77-palavras-contra-a-discriminacao-racial?inheritRedirect=true>

⁶⁴ www.programaescolhas.pt

⁶⁵ For more information, http://www.snslp.sk/CCMS/files/2016_HR_Report_SNCHR_eng.pdf

⁶⁶ UN Committee on the Rights of Persons with Disabilities, Concluding Observations to Sweden, U.N.Doc. UNCRPD/C/SWE/CO/1 (2014), para. 4

⁶⁷ L. Waddington and A. Broderick, Promoting equality and non-discrimination for persons with disabilities, Council of Europe Report, 2017, <https://edoc.coe.int/en/people-with-disabilities/7279-pdf-promoting-equality-and-non-discrimination-for-persons-with-disabilities.html>

The **National Agency for Special Needs Education and Schools**⁶⁸ is described as the Sweden's largest body of knowledge in special needs education. The Agency offers special needs education support to all schools and preschools all over the country, answers questions and provide courses and conferences, at no charge. Its website is a body of knowledge and people may find out about research, development, advice and tips in special needs education and accessible education. For example, experienced specialists answer questions about learning consequences of different types of disabilities. Special needs support is provided in the form of advice and support in mapping learning difficulties, information and in-service training for preschools and school activities across Sweden. The platform is also a search engine with thousands of selected and reviewed teaching materials for special needs education.

XII. UNITED KINGDOM

Specialist Tribunals

In Great Britain, Special Educational Needs and Disability (SEND) tribunals have been created to consider parents' appeals against the decisions of the Education Authority about children's special educational needs, where the parents cannot reach agreement with the education authority⁶⁹. They also deal with claims of disability discrimination in relation to children at school. There is some emerging case law arising from these tribunals.

Each case is heard by a panel of three people. The chairman is a lawyer and the other two members have experience of special educational needs and/or public administration.

In March 2017, the government committed to introduce a two-year national trial to expand the powers of the first-tier (SEND) tribunal to make non-binding recommendations on the health and social care aspects of education, health and care plans alongside the educational aspects. The special educational needs and disability (first-tier tribunal recommendation power) regulations 2017 came into force on 3 April 2018.

Reducing exclusions among Somali and African Caribbean boys: the Preston Manor School pilot experience⁷⁰

In 2012, Preston Manor School identified that Somali and African Caribbean pupils were disproportionately given fixed termed exclusions at key stage 4. For example, 45 out of the 122 students excluded with fixed termed exclusions were Somalian and African Caribbean pupils. The school decided to launch the Black Boys Council (BBC) to tackle this issue among black boys. The idea is to provide those pupils with an opportunity to broaden their horizons and to increase their aspirations and self-esteem. It is also to give them responsibilities to enable them to succeed in school and to become positive role models to others. The BBC is made of pupils from various year groups who are academically successful as well as those who are at risk of being excluded. For example, BBC members met with successful Black men from KPMG, one of the largest professional services companies in the world and one of the Big Four auditors, along with Deloitte, Ernst & Young and PricewaterhouseCoopers. They also participated in the business training day which consists of researching, selecting, marketing and selling a product

⁶⁸ <https://www.spsm.se/om-oss/english/our-mission/>

⁶⁹ <https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability>
<https://www.healthandeducationchamber.scot/additional-support-needs/12>

⁷⁰ <https://www.equalityhumanrights.com/en/advice-and-guidance/education-case-studies>

of their choice. BBC members are given a special badge to wear at school so other children know that they belong to the BBC. This action has a positive knock-on effect as pupils overall behave better to get a chance to become a BBC member in future.

The BBC has contributed to a dramatic decrease in the rate of fixed term exclusions from 86 to 35.

Research and guidance of the Equality and Human Rights Commission, the Equality body:

The Commission conducted a **large scale review in 2016 about the disadvantage in education experienced by minority groups** in particular within the sector of education e.g. homeless people, those with learning disabilities, Gypsy, Roma and Travellers, migrants, refugees and asylum seekers⁽⁷¹⁾. Gypsy, Roma and Traveller children are still 4 to 5 times more likely to be excluded from school than the national average, even despite a significant fall in numbers. There were 35.8 exclusions of children from these communities per 1,000 pupils in England - a decrease of 13.9 cases per 1,000 compared with previous years. At general certificate of secondary education level (around the age of 16), children with special educational needs continue to underperform compared to their peers. Children with SEN were less likely to achieve at least five A-C GCSEs (23.4%) compared to children without SEN (70.4%).

The EHRC has also published a **report on prejudice-based bullying in Scottish schools**⁷². It uses the lens of the protected characteristics covered by the Equality Act 2010 to assess how this behaviour is being experienced and addressed. It has also provided some **guidance** and advice and a short video on how **to tackle prejudice based bullying in schools** on its website⁷³. This guidance suggests schools and education authorities consider improvements in creating a school culture that promotes the feeling of safety, celebrating difference, using language of diversity, creating an inclusive environment for students and empowering staff and students. It also provides tips on what to do when discriminatory bullying occurs, as well as links to further guidance and information.

Legal support

Last year the EHRC ran a legal support project in discrimination in education which provided advice and funding (£500,000 available) for individuals regarding their cases⁷⁴. A recent case tribunal received a lot of media attention about the lack of reasonable accommodation against a primary schoolboy with Asperger Syndrome by Glasgow City Council⁷⁵.

⁷¹ <https://www.equalityhumanrights.com/en/our-work/news/new-report-reveals-society%E2%80%99s-most-disadvantaged-people-fall-further-behind>

⁷² <https://www.equalityhumanrights.com/en/publication-download/prejudice-based-bullying-scottish-schools-research-report>

⁷³ <https://www.equalityhumanrights.com/en/bullying>

⁷⁴ <https://www.equalityhumanrights.com/en/legal-casework/legal-support-project/legal-support-project-discrimination-education>

⁷⁵ http://www.heraldsotland.com/news/education/16094939.Revealed__disabled_children_more_likely_to_be_excluded_from_school_than_able_bodied_pupils/; Another case involved age and disability discrimination against a disabled pupil who required an additional year of schooling but his funding was cut; <https://www.equalityhumanrights.com/en/legal-work-scotland/legal-work-scotland/scottish-legal-articles/dm-v-fife-council-2016>

Chapter III

THE SITUATION IN THE REPUBLIC OF MOLDOVA

Country Overview

Even if its economy has expanded by an average of 5% annually since the early 2000s, the Republic of Moldova is one of the poorest countries in Europe.

It is a **multiethnic country**. According to the latest census in 2014, ethnic minorities are represented by Ukrainians (6.6%), Gagauz (4.6%), Russians (4.1%), Bulgarians (1.9%) and Roma (0.3%). Nevertheless, the number of Roma seems underestimated in the latest census. According to official administrative sources, they should be around 23, 000 (instead of 8,323). Some Roma leaders estimate that they are more than 100, 000 or even 250, 000 but these figures have never been substantiated. While the number of minorities is decreasing, the population of the Gagauzians has however doubled.

According to the Declaration of Independence of the Republic of Moldova (1991), the official language is Romanian, while the 1994 Constitution states that the national language of the Republic of Moldova is Moldovan, and its writing is based on the Latin alphabet. Most linguists consider literary Romanian and the Republic of Moldovan rather identical. Nevertheless, in December 2013, the Constitutional Court of Moldova considered that the Declaration of Independence takes precedence over the Constitution, and that the **State language** should be called "Romanian". On 31 October 2017, the Constitutional Court of Moldova qualified as constitutional the legislative initiative of 34 MPs to replace the Moldovan language in the Constitution with Romanian. The draft law on changing the name of the official language in the Constitution was initiated by the Liberal-Democrats, Liberals and the MPs of the European People's Party. The Democrats showed formal support for the initiative, while the Socialists strongly opposed it.

Besides, until very recently, **Russian language** has had the status of a «language of inter-ethnic communication» that is to be used alongside the State language in all spheres. According to the 2014 national census, over 80% of the residents of the Republic of Moldova identify as Romanians or Moldovans, with only 9.7 percent now saying they are ethnic Russians. The next three largest minorities, the Gagauz, Ukrainians and Bulgarians utilize Russian to a significant, but by no means overwhelming, extent. 33% percent of the Gagauz, 50% of Ukrainians, and 33% of Bulgarians reported speaking Russian on a daily basis in 2014⁷⁶.

Moldovans are overwhelmingly **Orthodox Christians**. The Republic of Moldova is a **secular State** in which churches and religious associations do not have an official role in the national political system or lawmaking process. Moreover, the Moldovan constitution provides for full freedom of religious practice. Nevertheless, as the UN Rapporteur on Freedom of religion or belief mentioned it in his report in 2012⁷⁷, the Orthodox Church enjoys a privileged status at variance with the constitutional guarantee of a secular State. He also mentioned that

⁷⁶ <http://www.statistica.md/pageview.php?!=en&idc=479>

⁷⁷ Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, 27 January 2012, https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-60-Add2_en.pdf

Moldovan politicians often highlight their religiosity and seek the support of clergy in order to increase their popularity among the electorate.

The Republic of Moldova is **mainly rural** as only 38.2 % of the population live in cities. The Republic of Moldova amounting to 3,5 million inhabitants is going through a demographic transition, due to a falling fertility rate and **intense outmigration**. A key feature of the country is the intense migration of working age people to other countries, for both seasonal and long-term or even permanent work.

Perceptions in the Republic of Moldova

Negative stereotypes and prejudices against disabled people and Roma continue to prevail in the Republic of Moldova.

According to a survey on perceptions and attitudes towards equality, conducted in 2015⁷⁸, more than half of respondents do not accept as neighbors, friends or family members of marginalized groups, including people with intellectual disabilities. At the same time, people with mental and intellectual disabilities are perceived mainly as negative: 27.7% perceive them as “miserable”, 17.2% consider them “dangerous people”, 7.2% as “persons to be isolated”, and about 6% attest to an attitude of contempt. Even if individuals with physical disabilities are perceived more positively, negative perceptions prevail over this group. About 60% of respondents associate them with “invalid”, 33.6% of respondents consider “no foot, hand”, about 25% of the respondents “can not care” and “can not work”. Of the total of respondents, about 63.6% consider that children with disabilities should be educated in regular classes, and 27.3% of those interviewed believe that children with disabilities should be educated in separate schools.

Beside, there are entrenched stereotypes of and prejudice against Roma, including in the media: almost 67 % of respondents held the view that the majority of Roma do not work but earn money illegally, including through human and drug trafficking; around 78 % held the opinion that Roma usually looked for easy ways to earn money, including through tricks and cheating; and 55 % considered that Roma did not send their children to school as a matter of principle, because of their traditions.

I. THE LEGAL FRAMEWORK RELEVANT TO INCLUSIVE EDUCATION

In addition to a certain degree of protection from discrimination in the Constitution, it appears that the Republic of Moldova has adopted a complete and comprehensive anti-discrimination legislation, including two pieces of legislation which specifically seek to tackle discrimination on the basis of gender and disability respectively and a variety of standalone provisions within pieces of legislation regulating various fields of activity. This section contains an analysis of constitutional and legislative provisions both in terms of their substance and their impact in practice. It also refers to the relevant legal remedies and the key actors addressing discriminatory practices.

⁷⁸ OHCHR, UNDP, Equality Council, Study on Equality Perceptions and Attitudes in the Republic of Moldova, 2015 ; http://md.one.un.org/content/dam/unct/moldova/docs/pub/ENG-Studiu%20Perceptii%202015_FINAL_2016_Imprimat.pdf; See also L. Malcoci and A. Barbarosie, *The Phenomenon of Discrimination in Moldova: Perceptions of the Population, A Comparative Study*, (Institute for Public Policy, Chisinau, 2015), <https://www.soros.md/files/publications/documents/The%20Phenomenon%20of%20Discrimination%20in%20Moldova.pdf>

A. The international treaties

Since its independence, the Republic of Moldova has ratified, amongst others, the following international legal instruments:

- ▶ the International Covenant on Civil and Political Rights
- ▶ the International Covenant on Economic, Social and Cultural Rights
- ▶ the International Convention on the Elimination of All Forms of Racial Discrimination
- ▶ the Convention on the Elimination of All Forms of Discrimination against Women
- ▶ the Convention on the Rights of Persons with Disabilities
- ▶ the Convention on the Rights of the Child
- ▶ the UNESCO Convention against Discrimination in Education.

The Republic of Moldova ratified the European Convention on Human Rights in 1997⁷⁹. The Republic of Moldova also ratified the revised European Social Charter in 2001 as well as the Framework Convention for the Protection of National Minorities in 1996. The Republic of Moldova has not yet ratified Protocol no. 12 to the ECHR, which provides a freestanding right to non-discrimination, despite recommendations from the Council of Europe⁸⁰. It has only signed the European Charter for Regional or Minority Languages.

B. The Moldovan Constitution

Article 16, headed “Equality”, provides in its first paragraph that “the foremost duty of the State shall be the respect and protection of the human person”. This provision imposes both a positive and a negative duty on the government, such that it is both prohibited from taking actions which might infringe a person’s right to equality and required to take action to prevent people within its jurisdiction from facing inequality or discrimination.

The right to equality itself is conferred in Article 16(2) of the Moldovan Constitution: “All citizens of the Republic of Moldova shall be equal before the law and public authorities, regardless of the race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin”⁸¹.

The protected characteristics in Article 16(2) of the Constitution are exhaustive, making it difficult to apply the protection to persons marginalised because of other characteristics not considered at the time of drafting, such as disability, state of health (including HIV/AIDS status), sexual orientation, gender identity, place of residence etc.

⁷⁹ The Republic of Moldova has made several declarations restricting the application of rights to the Transnistrian region. In its instrument of ratification to the European Convention, Moldova declared: “The Republic of Moldova (...) will be unable to guarantee compliance with the provisions of the Convention in respect of omissions and acts committed by the organs of the self-proclaimed Trans-Dniester republic within the territory actually controlled by such organs, until the conflict in the region is finally settled”. However, the European Court of Human Rights has held that this declaration is not valid within the meaning of Article 57 of the Convention ECHR 8 July 2004 *Ilașcu and Others v Moldova and Russia*, No. 48787/99, Para 335.

⁸⁰ European Commission against Racism and Intolerance, *ECRI Report on the Republic of Moldova (Fourth Monitoring Cycle)*, 2013, p. 8, available at: <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Moldova/MDA-CbC-IV-2013-038-ENG.pdf>.

⁸¹ The Constitutional Court has considered the scope of Article 16 in several cases. In a case about whether differential insurance payments between lawyers, notaries and bailiffs was unconstitutional, the applicant argued that Article 16 includes both the right to non-discrimination and the right to equality. In its judgment, the Court did not differentiate between these two principles, stating that: « [T]he violation of the principle of equality and non-discrimination occurs when a treatment is applied differently in cases equal, without any objective and reasonable motivation, or there is a disproportion between the aims and means used ». Constitutional Court, Decision No. 16 of 12 June 2007

Moreover, even if article 19(1) of the Constitution asserts that “Foreign citizens and stateless persons shall enjoy similar rights and duties as the citizens of the Republic of Moldova, with the exceptions provided by the law”, article 16 expressly applies only to “citizens of the Republic of Moldova” and not to stateless persons or foreign citizens. Refusal to afford protection from discrimination to non-citizens would be at odds with international and European treaties to which Moldova is a party⁸².

Nevertheless, the supremacy of international human rights law over domestic law is guaranteed under article 4(2) of the Constitution⁸³. The Constitutional Court has thus recognised that the provisions of the ECHR must be enforced in the same manner as national legislation and prevail to the extent of any inconsistency with domestic law.

The Constitutional Court of Moldova has found that Article 16 only concerns the application of rights found elsewhere in the Constitution, stating that: “Article 16 (...) supplements other substantial provisions of the Constitution and does not exist independently, being applicable only in relation with the enjoyment of rights and freedoms guaranteed by the constitutional provisions. Consequently, Article 16 shall be combined with another constitutional Article that guarantees a right”⁸⁴. Article 35 of the Constitution refers to the right to education and shall thus be covered by this general equality principle.

Article 35 of the Constitution of Moldova also provides for right to education that shall be ensured equally for everyone. The same provision also acknowledges that the State guarantees the right to choose the language of education and that study of the official language shall be ensured within all types of educational institutions. State public education is free of charge.

According to article 13(1) of the Constitution, the State language is Moldovan but the Declaration of Independence of Moldova (1991), which prevails over the Constitution, states the official language is Romanian. Nevertheless, the State acknowledges and protects the right to the preservation, development and use of the Russian language and other languages spoken within the territory of the State according to article 13(2) of the Constitution.

Article 51 of the Constitution provides for the protection of the rights of persons with disabilities. It appears to provide for positive action: “Disabled persons shall enjoy special protection by the whole society. The State shall ensure normal conditions for medical treatment and rehabilitation, education, training and social integration of disabled persons”.

C. The Code of Education

In 2014, the Parliament of the Republic of Moldova adopted the Code of Education (Code No. 152 of 17 July 2014), which regulates the education system and underlines the importance of international treaties and conventions on human rights⁸⁵ and enshrines the principles of equality, non-discrimination, intercultural dialogue, tolerance and social inclusion⁸⁶.

⁸² For example, Article 5 of the ECHR affords to right to liberty and security to « everyone » and Article 1 of UDHR provides that « [a]ll human beings are born free and equal ». Article 26 of the ICCPR provides that « all persons are equal before the law » and that the law should guarantee « to all persons equal and effective protection against discrimination ». Article 5 of CERD similarly requires state parties to guarantee « the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law ».

⁸³ According to this provisions, “wherever disagreements appear between the conventions and treaties on fundamental human rights to which the Republic of Moldova is a party and its domestic laws, priority shall be given to international regulations”.

⁸⁴ Constitutional Court, Decision No. 14 of 8 October 2013, available at: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=350284>.

⁸⁵ Article 2 of the Code refers to numerous relevant sources of international law, including the CRC, the CRPD, and the UNESCO Convention against discrimination in education.

⁸⁶ Article 5(d) of the Code provides that the “mission” of education in Moldova includes “promoting dialogue, intercultural spirit of tolerance, non-discrimination and social inclusion”.

Article 3 of this Code establishes the concept of “intervention measures and support services for inclusive education”, which is a set of measures and services designed to meet the demands of children, pupils and students with special educational needs in order to facilitate their access to community-based educational services.

Non-discrimination is a key aspect of the underlying purpose of the Code. Article 7 of the Education Code provides that the “fundamental principles of education” include access to education without discrimination, social inclusion, and ensuring equality. Article 9 makes clear that access to education is available on an equal basis to all, regardless of citizenship or nationality. Nevertheless, there is no general prohibition of discrimination found in the Education Code, nor are the provisions on equality of access defined in terms of forms of discrimination or the characteristics protected.

Despite this commitment to equal access and non-discrimination, the Code does not provide for specific causes of action or remedies for those who have been denied access to education and subject to discrimination in education. However, the general remedies in the Civil Code are available.

In addition, on 23 November 2014, a new Education Code entered into force⁸⁷. The Code includes several provisions on special education needs⁸⁸ and provides that parents have the right to choose the educational institution they want their children to attend⁸⁹. These provisions are supplemented in the Law no. 60 (see below).

Articles 27, 29 and 31 of the Education Code provide for home schooling concerning disabled children in primary and secondary education. Although this possibility may be considered as reasonable accommodation, it may also be potentially misused to segregate or exclude disabled children from regular schools.

D. The relevant legislations

1. Law No. 3465 of 1 September 1989 on the functioning of the languages spoken in the territory of the Moldavian Soviet Socialist Republic (SSR)

According to its articles 1 and 3, Law No. 3465 provides that the State language in Latin alphabet is the only official language and that Russian is the language of inter-ethnic communication.

Article 4 of the Law guarantees the use of Ukrainian, Russian, Bulgarian, Hebrew, Yiddish, Romani languages and languages of other ethnic groups living on the territory of the Republic of Moldova, for satisfaction of national-cultural needs.

Its article 18 guarantees the right to receive education at all levels in the State language and Russian and creates the necessary conditions for the right of citizens of other nationalities residing in the country to education and training in their mother tongue (Gagauz, Ukrainian, Bulgarian, Hebrew, Yiddish, etc.).

Nevertheless, in its very recent decision dated 4 June 2018, the Constitutional Court ruled that the name of the law referring to Moldovan SSR reflected an outdated reality, had been supplanted by subsequent legislation and was, therefore, no longer in effect. As a result, the Russian language no longer has the special status it used to do. Those who try to claim otherwise would have no legal

⁸⁷ Articles 9(6), 16(6), 25(2), 32–35, and 40(5).

⁸⁸ Articles 136(1) and 138(1)(a).

⁸⁹ Decision approving the Development Program of Inclusive Education in Moldova for 2011–2020 (Government Decision No. 523 of 11 July 2011), available at: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=339343&lang=1>

basis to maintain this stance. The Court stressed that the effects of declaring the obsolescence of a law are equivalent to its repeal.

The Moldovan high court declared that translation of normative acts into Russian, their publication in translation, as well as State guarantees of the right of residents to receive education in Russian “do not contradict the status of Romanian as the state language of Moldova”.

2. Law n. 382-XV of 19 July 2001 on the rights of persons belonging to ethnic minorities

Law No. 382-XV defines national minorities as persons who reside on the territory of the Republic of Moldova, have Moldovan citizenship, possess ethnical, cultural and linguistic features that differ from the majority of the population (Moldovans) and consider themselves to be of a different ethnical origin (art. 1).

It contains relevant provisions with respect to minority rights, and among them, the principle of equality and non-discrimination for persons belonging to national minorities (art. 4); the right to freedom of religion of minorities (art. 14); the right to use their names, last names and patronymics in official documents (art. 16); or the appointment of the Bureau of Inter-Ethnic Relations as the agency responsible for the promotion of the State policy in the field of inter-ethnic relations and the Coordination Council as its advisory body (art. 25)⁹⁰.

According to article 6 of this legislation, “the State shall guarantee the fulfilment of the rights of persons belonging to national minorities to pre-school education, primary education, secondary education (general and vocational), higher and postgraduate education in Moldovan and Russian, and shall create the conditions for fulfilling their right to education and instruction in the mother tongue (Ukrainian, Gagauz, Bulgarian, Hebrew, Yiddish, etc)”.

Persons belonging to ethnic minorities and their organizations have also the right according to the law to create private preschool institutions and educational institutions of all levels. Studying of the Moldavian language and literature, and also history of the Republic of Moldova in all educational institutions is mandatory.

3. Law no. 5-XVI of 9 February 2006 on Ensuring Equal Opportunities between Women and Men (the Equal Opportunities Law)

This legislation promotes gender equality, primarily through the imposition of duties on public bodies to make decisions and policies consistent with the notion of equal opportunities between women and men.

The application of the Equal Opportunities Law extends to the “political, economic, social, cultural and other spheres of life” and includes specific duties with respect to education (art. 13) in particular. The Law prohibits several forms of actions amounting to discrimination on grounds of sex⁹¹. Educational and training institutions are also enjoined to ensure equality between men and women, in particular “through developing didactic materials and curricula in conformity with the principle of equality between women and men” (art. 13-1 d).

⁹⁰ And also the obligation of local administrations with considerable minority groups to publish administrative acts in the language of minorities (art. 8); the right of persons belonging to national minorities to communicate with public institutions in Moldovan and Russian and to obtain a response in the same language of communication (art. 12);

⁹¹ It states that competent public authorities shall not promote policies or allow the performance of actions that do not ensure equal opportunities between men and women; it stipulates that actions that restrict or exclude equal treatment of men and women are prohibited; and it provides that any legal document containing discriminatory provisions based on sex “shall be declared null by the competent bodies.” This reference to legal documents includes private contracts.

The Law does not include any enforcement mechanisms or remedies for breach of duty. Due to the lack of any enforcement mechanism or remedies under the Law, victims of gender discrimination shall rely on the Law on Ensuring Equality and not the Equal Opportunities Law (see below).

4. Law no. 23-XVI of 16 February 2007 on prevention and control of HIV/AIDS

According to its article 1(2), this legislation has amongst its objectives to “exclude discrimination of people affected by the HIV/AIDS epidemic, guarantee respect for human rights in this context and develop and improve programmes pertaining to child protection with the implementation of the educational system based on differentiated programmes, promotion of a healthy lifestyle, including a no-drugs lifestyle, HIV/AIDS prevention measures, as well as informing on problems of protection measures for HIV prevention”.

According to Article 5(5), “Education programmes are based on the principle of non discrimination, promotion of tolerance towards people living with HIV (PLHIV), respecting and guaranteeing their rights”.

According to articles 6(2) and 6(3) respectively, “Children and youth affected by HIV/AIDS shall benefit of equal rights as their peers, benefiting of access to educational and HIV/AIDS prevention programmes, social assistance and legal protection, as well as care and treatment, which they require as a result of their status” and “Children and youth affected by HIV/AIDS from medical, social, education and penitentiary institutions cannot be discriminated with regards to their status”.

Article 15 prohibits mandatory HIV testing prior to admission to an educational institution.

According to Article 23, “No educational institution shall refuse admission to any prospective student or discipline; segregate, deny participation to activities, including sport ones, deny benefits or services to; or expel any current student on the basis of his/her HIV positive status. Discrimination of PLHIV’s relatives or partners is prohibited”.

5. Law No. 121 of 25 May 2012 on Ensuring Equality

Law No. 121 prohibits discrimination on a number of grounds and in all spheres of life, subject to limited exceptions. It also establishes the Equality Body hearing complaints of discrimination and promoting equality.

The Law provides protection for all people in the Republic of Moldova from discrimination on a wide variety of grounds, in a large number of areas regulated by law. The Law regulates the prohibition of discrimination in “political, economic, social, cultural and other spheres of life”⁹².

Article 9 taken in conjunction with article 1 prohibits discrimination within the field of education on grounds of “race, colour, nationality, ethnic origin, language, religion or belief, sex, age, disability, opinion, political view, or any other similar criteria”. Accordingly, various important grounds of discrimination are not explicitly covered by the Law. It does not explicitly prohibit discrimination on grounds such as the state of health, sexual orientation, gender identity, place of residence etc. However, the phrase “or any other similar criteria” means that further grounds of discrimination may be protected insofar as they can be shown to be similar to the included

⁹² However, it does not include discrimination in the areas of family (including marriage), adoption relations and religious institutions.

grounds and is construed accordingly by the courts and the Equality Body. This is to be contrasted with the Constitution, Article 16(2) of which prohibits discrimination in respect of an exhaustive list of grounds.

According to its article 1(1), the Law protects “all persons in the Republic of Moldova”. It is not limited to Moldovan citizens.

Article 2 of the Law lists five forms of prohibited discrimination: direct discrimination, indirect discrimination, discrimination by association, racial segregation, harassment, incitement to discrimination and victimisation. These definitions are broadly in line with international best practice.

The Law also defines the term “reasonable accommodation” in accordance with international best practice as including modifications and adjustments that are necessary and appropriate for assuring to each person the exercise of rights and freedoms on an equal basis with others. Nevertheless, it does not define the lack of reasonable accommodation expressly as a form of discrimination to be prohibited.

Article 9(4) preserves the right of religious educational institutions to refuse to admit a person to study if his or her religious status does not meet the requirements for access to the institution. Unlike Article 7(6) on genuine occupational requirements, this exception is not framed in such a way to impose that the requirement shall be legitimate and justified. This gap leaves room for these educational institutions to act in a way that may be not in accordance with European law requiring that adherence to a particular belief must duly justified and that the refusal of enrollment is proportionate to this aim⁹³.

6. The Law no. 60 of 30 March 2012 on Social Inclusion of Persons with Disabilities

The Law on Social Inclusion of Persons with Disabilities was intended to make major progress in the protection of the rights of persons with disabilities and to bring the law in line with Moldova’s obligations under international law, in particular the CRPD.

Article 2 of the law defines a disabled person as “a person with physical, mental, intellectual or sensory disabilities which in interaction with various barriers or obstacles may hinder their full and effective participation in society on an equal basis with others”. This definition of disability is in line with the CRPD’s endorsement of a social model of disability.

Article 5 of the Law states that the implementation of the law is to be guided by principles of, *inter alia*, “non-discrimination”, “equality” and “respect for inherent dignity [and] individual autonomy”. It provides that persons with disabilities shall receive favourable treatment in terms of access to mainstream education. Article 8 of the Law provides a number of protections against discrimination for persons with disabilities. Discrimination is defined as: “[A]ny distinction, exclusion, marginalisation, restriction or preference, and the refusal to create favourable conditions and reasonable accommodation, that lead to the failure or complication of the recognition, enjoyment or use of civil, political, economic, social or cultural rights and is prohibited and punishable by law”. This is a broad definition of discrimination, encompassing both direct and indirect discrimination and requiring positive action and reasonable accommodation of disability. In addition, the Law

⁹³ See the existing case-law relating to employment issues ; ECHR 10 septembre 2010 *Obst and Schüt v. Germany*, no. 425/03 and no. 1620/03 ; ECHR 3 February 2011 *Siebenhaar v. Germany*, no.18136/02; CJEU 18 April 2018 *Vera Egenberger*, aff. C414/16

requires the State to “endeavour to ensure that all categories of persons with disabilities (...) are not subject to multiple discrimination” (article 8(12)).

Article 11 imposes a duty on the State and legal persons governed by public and private law to take measures to raise awareness about persons with disabilities⁹⁴.

Chapter 4 of the Law regulates education, training and professional development of persons with disabilities. It provides for equal access to all levels of education by imposing obligations on the Ministry of Education and local authorities to create the conditions necessary for disabled children to access education⁹⁵.

This is a broad obligation that includes ensuring there are adequately trained teachers and other reasonable accommodations⁹⁶. This law seems to offer a greater level of protection than the Education Code. For example, it provides for “persons with disabilities [to] follow general education, specialised secondary education and higher education in educational institutions, as established by the Government”⁹⁷.

A substantial part of the Law is concerned with improving accessibility in key areas such as education for persons with disabilities. A certain number of regulatory texts have also been adopted such as the Order No. 99 of 22 February 2015 relating to the Child Development Assessment Methodology, the Order no. 98 of 26 February 2015 relating to the organization of home schooling and the Order no.156 of 20 March 2015 relating to specific examination procedures for children with special educational needs⁹⁸. On this latter text, the Council on the prevention and elimination of discrimination (Equality Council or CPEDEE, see below) examined the methodology for organizing and conducting the baccalaureate examinations, the school year 2013-2014, adopted by Order of the Ministry of Education no. 64 of 7 February 2014. The Equality Council found that the wording used by the methodology was unfortunate and questionable and that the phrases “in exceptional circumstances”, “immobilized candidates”, “the place of immobilization” were formulated in a humiliating and stigmatizing way towards people with disabilities, and referred to the medical approach to disability, which is contrary to the international and European standards.

Regarding the accessibility of buildings and constructions for people with disabilities, there is also a set of normative acts regulating the technical norms that must be observed when planning, executing and putting into operation a construction, namely the Order no. 189 of 12 February 2013 relating to the norms regarding the adaptation of civil buildings and urban space to the individual needs of persons with disabilities or the Building Code for the Design of Buildings and Buildings with Consideration for Accessibility for Persons with Disabilities.

⁹⁴ This includes:

- promoting a positive perception and an active social role for people with disabilities;
- cultivating a respectful attitude towards persons with disabilities in the education system;
- promoting the recognition of skills, merits and abilities of persons with disabilities, as well as the contribution made by them at their workplaces;
- encouraging media outlets to report on people with disabilities in a manner that would contribute to their social inclusion;
- conducting public awareness programs regarding persons with disabilities and their rights.

⁹⁵ Law on Social Inclusion of Persons with Disabilities (Law No. 60 of 30 March 2012), Article 29.

⁹⁶ Refer to article 27 of the Law

⁹⁷ Article 29(2)

⁹⁸ Please refer to <http://msmps.gov.md/ro/advanced-page-type/protectia-sociala-persoanelor-cu-dizabilitati>

E. Provisions relating to remedies

According to article 17 of the abovementioned Law no. 121, acts of discrimination are subject to disciplinary, civil, administrative and criminal legislation in force. As the legislation in force made no sufficient provisions for criminalization of acts of discrimination, certain amendments were introduced to the Criminal Code of the Republic of Moldova No. 985-XV of 18 April 2002 and the Contravention Code No.218-XVI of 24 October 2008 by adopting the Law on amending and supplementing some legal acts No.306 of 26 December 2012.

1. The Civil Code

The Civil Code of the Republic of Moldova (Law No. 1007 of 6 June 2002) is a key aspect of Moldovan anti-discrimination law, as it establishes a set of remedies available in case of unlawful discrimination. It has a crucial supportive function.

Article 11 sets out the remedies available under the Code. These include: damages, including for non-pecuniary loss; invalidation of judicial acts and acts of public authorities; recognition of the right at issue; injunctive relief to suppress acts which violate or threaten to violate the right and restoration of the individual to the condition existing before the violation of the right. Accordingly, a variety of remedies may be available to victims of discrimination.

2. The Contravention Code

The Contravention Code of the Republic of Moldova (Code No. 218 of 24 October 2008) sets out administrative offences, contraventions of which give rise to administrative sanctions. Liability in respect of an administrative offence is separate from both criminal and civil liability: contravention does not need to be established in court. Rather, the Code gives various administrative bodies jurisdiction to establish particular offences, such as the CPEDEE (see below). Nevertheless, in the case of the administrative offences relating to discrimination, only courts may impose sanctions.

The Contravention Code contains several administrative offences relevant to equality and non-discrimination. Each offence is punishable by a certain number of penalty units, with each unit amounting to MLE 50 (EUR 2,25)⁹⁹.

Under Article 65¹ of the Contravention Code, it is an offence to make a distinction, exclusion, restriction or preference based on race, nationality, ethnic origin, language, religion or belief, sex, age, disability, political affiliation or any other criteria, manifested in:

- ▶ the provision of access to educational institutions of any type and level;
- ▶ the setting of admission principles based on certain restrictions;
- ▶ the educational process, including the evaluation of the learnt knowledge; or
- ▶ scientific and educational activity.

Persons found to have committed this kind of offence may be fined 60–84 conventional penalty units for individuals, 120–210 units for responsible persons and 210–270 conventional penalty units for legal entities.

⁹⁹ Article 34(1) ; By Law on Amendment and supplementation of the Code of Administrative Offences of the Republic of Moldova no. 208 as of 17.11.2016 (which came into force on 16.03.2017) was modified a fine amount of conventional unit, so that, a conventional unit will be equal to 50 lei.

If the contravener pays half the fine within 72 hours from its establishment, the fine is considered to have been executed. If a person fails to pay the fine within 30 days, a court may replace it with:

- ▶ a fine that doubles the amount but which shall not exceed the maximum limit of the sanction;
- ▶ deprivation of the right to carry out certain activities from six months to a year;
- ▶ unpaid community work, with an hour of work amounting to one penalty unit with the duration of work of maximum 60 hours; or
- ▶ arrest, one day of arrest being equal to 2 conventional units, with the duration of the arrest not to exceed 30 days¹⁰⁰.

3. The Criminal Code

The redrafted Article 176(1) of the Criminal Code (Infringement of the right to equality of citizens) provides that:

“any distinction, exclusion, restriction or preference of one person, or group of people, any support for discriminatory conduct in political, economic, social, cultural and other spheres of life on the grounds of race, nationality, ethnic origin, language, religion or belief, gender, disability, opinion, political affiliation or any other criteria:

- a) committed by a person holding a position of responsibility;
- b) resulted in considerable prejudices;
- c) committed by displaying discriminatory messages or symbols in public places;
- d) committed on two or more criteria;
- e) committed by two or more people.

shall be punished by a fine in the amount of 750 to 950 conventional units or by community service for 150 to 240 hours or by imprisonment for up to 2 years, in all cases with (or without) the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years”¹⁰¹.

¹⁰⁰ Art. 34(4)

¹⁰¹ Parag. 2 provides: « Encouragement or support for actions stipulated in para.1 through mass-media shall be punished by a fine in the amount of 950 to 1200 conventional units or by community service for 160 to 240 hours, by a fine in the amount of 2000 to 4000 conventional units to be applied to legal entities with the deprivation of the right to practice certain activities for 1 to 3 years ». Parag. 3 : « Actions specified in paragraphs (1) and (2) that by inadvertence provoked a homicide of a person or his/her suicide shall be punished by imprisonment for 2 to 6 years, by a fine in the amount of 1000 to 3000 conventional units to be applied to legal entities with the deprivation of the right to practice certain activities for 1 to 5 years or legal entity liquidation ».

Art. 346 of the Criminal Code was also modified under the Law no. 306 of 26 December 2012. It states the following : Deliberate actions, public instigation, including through mass-media, written or electronic, targeted to provoke national, racial or religious enmity or discord, to humiliate the national honor and dignity, as well as the direct or indirect limitation of the rights or establishing of direct or indirect advantages for citizens depending on their national, racial or religious affiliation shall be punished by a fine in the amount of up to 650 conventional units or by community service for 180 to 240 hours or by imprisonment for up to 3 years.

F. The key actors responsible to redress discriminatory practices

1. The courts

The administration of justice by courts is largely regulated by the Civil Procedure Code (Law No. 225 of 30 May 2003). Article 33 of the Code establishes the competence of courts to hear all civil cases involving individuals, businesses and public authorities concerning the violation of rights, freedoms and legitimate interests, including complaints in which discrimination is alleged.

Ordinary courts may adjudicate discrimination actions in civil, administrative and criminal jurisdictions. Courts may hear prosecutions for criminal offences involving discrimination as set out in the Criminal Code of the Republic of Moldova¹⁰².

In civil actions, complaints of discrimination are filed directly to the court, for example pursuant to Article 18 of the Law on Ensuring Equality. Applicants are not obliged to lodge a complaint with the CPEDEE before bringing a discrimination action to court. Similarly, applicants can apply to court after having lodged a complaint with the CPEDEE, so long as less than a year has passed since the alleged act was committed and the CPEDEE complaint has concluded.

Article 18 of the Law on Ensuring Equality provides that where cases of discrimination are brought to court in a civil capacity, a court may:

- ▶ declare that the claimant's rights were violated;
- ▶ prohibit the continuation of the discriminatory conduct;
- ▶ order the reinstatement of the situation prior to the violation of rights;
- ▶ order compensation for material and moral damage and recovery of court costs; or
- ▶ declare that a discriminatory document is null and void.

Article 21 of the Law on Ensuring Equality and Article 85(1) (a) of the Civil Procedure Code provide that persons bringing an action to court on matters of discrimination are exempt from paying filing fees. Pursuant to Article 18(2) of the Law on Ensuring Equality, trade unions or NGOs operating in the field of human rights can initiate civil actions on behalf of persons whom they believe were discriminated against. To be eligible to file this type of representative action, NGOs must show that they are registered at the State Registry of NGOs and have the consent of the victim (or victims).

There are two avenues through which courts may hear discrimination cases in an administrative, as opposed to civil, capacity. Firstly, decisions of the CPEDEE and other public authorities may be challenged in procedures akin to judicial review. Article 277 of the Civil Procedure Code establishes the right of parties aggrieved by an administrative act or failure to petition the courts for cancellation of the act, reinstatement of the right or compensation. Secondly, where the CPEDEE finds that one of the administrative offences in the Contravention Code relating to discrimination has been infringed, it may submit its findings to court, which will decide whether or not to impose sanctions.

¹⁰² Examples of such offences include: torture, inhuman or degrading treatment based on discrimination (Article 1661; sexual harassment for discriminatory purpose (Article 173); and the violation of the equality of citizens (Article 176)

2. The Council on the Prevention and Elimination of Discrimination (CPEDEE or Equality Council)

Pursuant to Article 11 of abovementioned Law no. 121, the Council on the Prevention and Elimination of Discrimination is established and defined as an independent and impartial body empowered to protect against discrimination and ensure equality.

a. Missions and Powers

Its functions include:

- ▶ examining the compliance of legislation with non-discrimination standards and proposing amendments to non-discrimination legislation;

For example, the Council examined the draft Education Code of the Republic of Moldova. Under Article 9 (3) of the proposed project, the basic funding for general education was based on the “money follows the pupil” principle, according to which the resources allocated for a pupil or child are transferred to the educational institution where he/she is learning. The Council noted that this approach did not take into account the particularities of the pre-university education institutions for minority language speakers in the territory of the Republic of Moldova (Russian, Ukrainian, Gagauz and Bulgarian). The Council highlighted that this situation constituted indirect discrimination based on language.

- ▶ collecting data on trends in discrimination at the national level and developing reports on this topic;
- ▶ give proposals to public authorities to prevent and combat discrimination, raising awareness in the community about discrimination and collaborating with international organisations specialising in non-discrimination.

For example, the Council has developed a set of general recommendations entitled «Legal protection of the right to education exercised without discrimination» which has been distributed to educational institutions in the country.

The CPEDEE may also act in a conciliatory role: one of its functions under Article 12(1)(m) is to “contribute to the amicable resolution of conflicts arising from the commission of discriminatory acts”.

For example, the Council found a settlement in its case 005/2013 about the refusal of a pre-school institution (kindergarten) to enrol a child diagnosed with diabetes, due to the lack of special feeding conditions in the institution. After intervention of the Council, the school administration eventually welcomed the child while providing reasonable accommodation of his special needs.

The CPEDEE is entitled to examine the complaints of persons who consider themselves to be victims of discrimination, submitting recommendations to the relevant authorities with regard to the initiation of disciplinary measures, detecting offences under the Contravention Code and notifying the prosecutor’s office in cases of criminal liability.

In this context, the CPEDEE has the right to request relevant data and information from people that are alleged to have committed discriminatory acts but it is not allowed to proceed to on-site inspections.

Where no administrative or criminal offences are considered to have been committed, the CPEDEE can only make recommendations under Article 15(4) to ensure the restoration of the victim's rights and to prevent the occurrence of similar acts.

For example, in response to the CPEDEE's recommendations, the Ministry of Education announced changes to the way that reasonable accommodation of children with disabilities were made when taking exams¹⁰³.

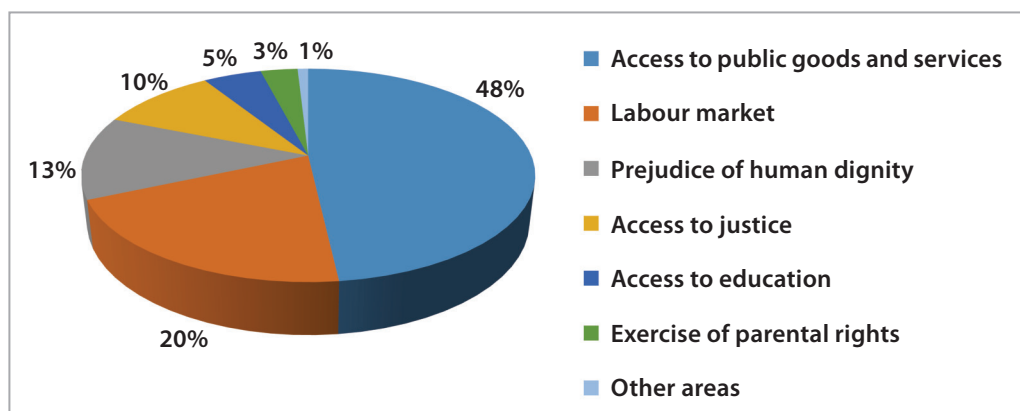
Where such recommendations are ignored after 10 days, the CPEDEE can propose to the relevant authority that disciplinary measures be imposed.

In respect of certain types of discrimination amounting to administrative offences as specified in the Contravention Code (Law No. 218 of 24 October 2008), the CPEDEE is empowered under Article 423⁵ of the Contravention Code to establish that certain provisions of the Code have been infringed. If it determines that such contraventions have occurred, it may under Article 15(8) refer its findings to a competent court, which can then choose whether or not to impose sanctions. The CPEDEE cannot itself impose sanctions. In 93% of the cases, the Council decisions have been maintained by the courts after being appealed.

The CPEDEE also lacks the power to challenge the validity of laws and regulations that it considers discriminatory in the Constitutional Court. Thus, although the CPEDEE is empowered in Article 12(a) to examine the compliance of legislation with standards of non-discrimination, it cannot take steps to render such laws invalid.

b. Data relating to claims of discrimination within the education sector

The number of claims before the CPEDEE in relation with access to education are very limited.

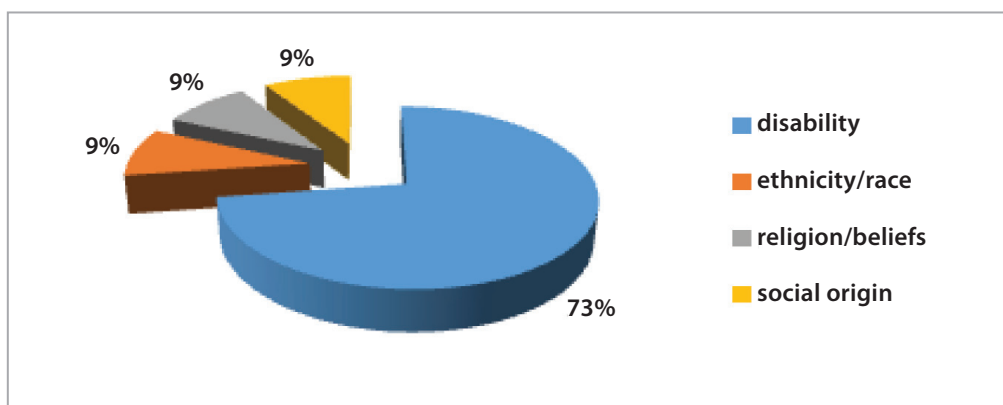


On average, only 5% of the total number of the finding decisions established discriminatory incidents. For the time being, only two CPEDEE's decisions relating to discriminatory harassment of pupils¹⁰⁴ out of the total of cases dealing with education were challenged before the courts and they both have been upheld.

¹⁰³ Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 122/2014 of 9 September 2014. Ministry of Education of the Republic of Moldova, "Changing Education Examination Pupils with SEN", 9 March 2013, available at: <http://www.aee.edu.md/content/modificarea-instruc%C5%A3iunii-de-examinare-elevilor-cu-ces>.

¹⁰⁴ See Decision 004/2013 about the harassment of a female pupil by her classmates and the administration of the vocational high school on the grounds of her disability and her social status as an orphan child. High school administration did not take any action to resolve the conflict and did not provide any reasonable accommodation. See also below Decision 164/14 relating to the harassment of a student with atheistic beliefs by a teacher.

Disability is the first discrimination ground within the field of education according to the CPEDEE statistics.



c. Examples of CPEDEE's decisions relating to discriminatory practices

In one case, the Equality Council has found physical inaccessibility of educational institutions for children with locomotor impairments along with lack of transport adapted for movement to and from the educational institution¹⁰⁵. As described below, it also found practices of harassment against children on the grounds of their belief or their race. Most of the remaining cases relating to the education sector are about the rigid attitudes of teachers in the process of integrating children with special educational needs into preschool and primary educational institutions, their lack of capacity to design and implement individualized curricula and the lack of sufficient support services¹⁰⁶. The last one is about the failure to include the 9th grade of the auxiliary schools in the Framework-Plan for Primary, Secondary and Upper-Secondary Education on inclusive education.

► Decision of 25 November 2013 Case no. 005/2013 relating to discrimination in accessing the preschool institution and denial of reasonable accommodation

The case was about the refusal to enrol a 4-year-old child suffering from type 1 diabetes mellitus because of the inability for the school institution to provide any special diet. School administration explained that type 1 diabetes mellitus could not be qualified as a disability and that the duty of reasonable accommodation did not apply at this level of education. Moreover, the child was forced to go and see several doctors in order for them to eventually decide about his enrollment. No psychopedagogic assistance services had been put in place in order to provide initial evaluation and make recommendations supporting educational inclusion of disabled children.

Referring to the European Court of Human Rights' judgement in *Glor v. Switzerland*, the CPEDEE decided that the state of health of the minor was a form of disability and therefore concluded that the duty of reasonable accommodation should apply. It was also concerned about the medical approach of school administration at odds with the UN Convention on the Rights of Persons with Disabilities and Law no. 60 on Social Inclusion of Persons with Disabilities promoting a psycho-social model of disability. The Equality Council concluded that pursuant to Law no. 121

¹⁰⁵ Decision of 9 September 2014 Case no. 122/2014

¹⁰⁶ See also Decision of 28 June 2014 Case no. 083/2014 regarding discrimination in accessing the preschool institution and denial of reasonable accommodation ; Decision of 5 December 2016 Case no. 477/16 regarding discrimination against a autistic child in the first of grade of school ; Decision of 16 February 2016 Case no. 361/15 concerning a secondary school lacking support teaching staff and skilled social workers to provide inclusive education

discrimination based on disability occurred. It therefore recommended to the General Directorate for Education, Youth and Sport of City of Kishinev to establish the Psychopedagogic Assistance Service, to draw up methodological instructions regarding reasonable accommodation of children with disabilities in preschool institutions, and to deliver training to the staff employed in these institutions.

- ▶ **Decision of 21 June 2016 Case no. 400/16 on instruction to discriminate on grounds of disability, and failure to provide reasonable accommodation for the child with disabilities in the kindergarten**

The Council was lodged with a complaint relating to the difficulties faced by a disabled child enrolled in kindergarten. From the very first day of attendance, the kindergarten teacher has been complaining and told the child's mother that parents would not want such a child in the group. She said she would not be able to work with the personal assistant of the child. Moreover, the individualized plan did not seem to have been effectively implemented. The teacher was later subject to a disciplinary measure. The Council concluded that the undesirable behavior towards this child, and the failure to provide for reasonable accommodation amounted to direct discrimination and infringed the right to education on an equal basis as well as the right to dignity of both the child and her parents.

- ▶ **Decision of 15 October 2014 in Case 164/14 regarding harassment and discrimination in accessing education on grounds of atheistic opinions and beliefs**

This case was about the adverse treatment of a child registered in the 4th grade because of his family's atheist convictions. As it turned out that the moral and spiritual education classes were in fact religion classes during which the pupils were instructed religious dogmas, the parents requested that their child would not to attend this course. Nevertheless, the timetable was arranged so that the moral and spiritual education class was neither the first, nor the last and therefore the child had no other alternative but to attend them. The teacher organized approximately 11 trips to 4 monasteries and hanged icons above the blackboard in the classroom. She deliberately organized debates on the topic "*Why doesn't I believe in God?*" to impose her views and stigmatized the child. This latter was mocked while the teacher insisted that children must pray and make the sign of the cross. The boys in the classroom started to bully and intimidate him, and eventually even physically harmed him. They ended up telling the child that his poor school performance was because he did not believe in God. During a concert performed by the children in the class to celebrate the end of the 4th grade, the teacher distributed diplomas to reward different behaviors (the most punctual, the most responsible student etc). The teacher distributed such diplomas to all the students in the class, except for the petitioner's son. School administration applied a disciplinary measure against the teacher and decided not to renew her employment contract.

The Equality Council concluded to discriminatory harassment and discrimination on the basis of atheistic beliefs and recommended to school administration that reasonable accommodation of the atheistic and religious beliefs are put in place in the educational process. It also recommended that the General Directorate for Education, Youth and Sport of the Municipality of City of Kishinev shall issue an explanatory letter to the education institutions at all levels as regards measures for reasonable accommodation of the atheistic and religious beliefs in the educational process and in assessment of the knowledge acquired in the scientific and teaching activity.

► **Decision of 13 February 2015 Case 187/2014 on racial harassment of a Roma girl**

In this case, the petitioner explain that her 5-year-old daughter was called “the ugly gypsy” and was told that “Gypsies are fools, dirty, steal and eat children ”while attending the Academy *FasTracKids*. As a defence, the teacher explained that he did not notice anything special about the behavior of children. He also mentioned that his institution was multicultural and had so far a positive experience with children from families of different cultures, ethnicities and backgrounds. Examining all the circumstances of the case, the Council nevertheless found that the facts set out in the complaint constituted racial harassment of the minor. As a result, the Council recommended that the International Children’s Academy “FasTracKids” apologize to the minor and her family in written or verbal form to the petitioner’s satisfaction. It also informed the teaching staff of the Council’s decision and requested to adopt measures to prevent any form of discrimination in its future activities.

► **Decision of 29 September 2017 Case no. 92/17 on the failure to include the 9th grade of the auxiliary schools in the Framework-Plan for Primary, Secondary and Upper-Secondary Education on inclusive education**

The Ombudsman for Children and the Center of Legal Assistance for Persons with Disabilities lodged a claim with the Council relating to the scope of framework-plans for primary, secondary and upper-secondary education approved by the Ministry of Education. These plans for 2012 fail to include the 9th grade of the special secondary education in auxiliary schools preventing the students with severe learning difficulties from acquiring secondary education on equal terms with the other children.

During investigation, the Ministry of Education has made a commitment that during the 2017-2018 academic year, the specialists of the auxiliary schools would review and adapt the school curriculum for the compulsory and optional subjects, by individualizing the educational process to the special educational requirements of the students. The CPEDEE recommended to the Ministry of Education to plan, arrange and monitor revision of the school curriculum in order to adapt them to the real needs of the students who are enrolled in auxiliary schools. It also recommended to include the group of 5th to 9th grades in the Framework-Plan for Primary, Secondary and Upper-Secondary Education for the 2018-2019 academic year, in auxiliary schools.

3. The Ombudsperson for the Protection of Children’s Rights

Law No.52 of 3 April 2014¹⁰⁷ provides the mandate for the People’s Advocate and the Ombudsperson for the Protection of Children’s Rights. They have an important role in preventing and combating discrimination. They have the task to “ensure the promotion and protection of human rights and fundamental freedoms”. 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 core competencies of the Ombudsperson for the protection of children’s rights are the following:

- the examination of individual complaints on the violation of rights and freedoms;
- the initiation of lawsuits against perpetrators of discrimination;
- the power to notify and bring actions to the Constitutional Court¹⁰⁸.

¹⁰⁷ It was established by the Law on the People’s Advocate of the Republic of Moldova of 30 April 2014, which was later amended in 2015 and 2016. The People’s Advocate was then constitutionalized in 2017 (Law no. 70 of 13 April 2017).

¹⁰⁸ Art. 16 of Law no. 52

The Ombudsperson represents one of the few means of individual access to the Constitutional Court, albeit in an indirect manner. The Ombudsperson refers a few cases each year to the Court. From 2013–2016 there have been a total of 12 referrals, nine of which occurred in 2013. For example, the Constitutional Court found unconstitutional a provision which limited admission to PhD study to those aged under 35¹⁰⁹.

The Ombudsperson for the protection of children's rights is also a monitoring body. For example, it has elaborated a survey on monitoring of social inclusion of children who suffer from disorders of autistic spectrum¹¹⁰ and the deinstitutionalisation process¹¹¹. After identifying several deficiencies in particular in the field of education, the Children's Ombudsman encouraged central public and local authorities and non-governmental organizations to establish a mechanism of efficient collaboration and cooperation for the realization of social inclusion of children with disorders of autistic spectrum and of children with mental deficiencies.

The Ombudsperson for the protection of children's rights also acts as a mediator. For example, it has settled the case no. 06-1/2 in 22 April 2016 relating to the difficulties faced by parents of a child with special educational needs who were many times advised by the administration of school to transfer their child in another institution because of the child behaviour¹¹². The child needed treatment and had accumulated many absences due to illness. Therefore, the institution was about to expel him. The agreement provided that the educational institution shall make all efforts for the child inclusion and on the other hand that the parents shall ensure the necessary assistance for their child (therapy sessions, consultation of specialists, relation with the teachers).

4. The Bureau for Interethnic Relations (hereinafter referred as to BIR)

It is a central public administration authority in charge of the following missions:

- ▶ promoting the state policy in the field of interethnic relations;
- ▶ functioning of the languages spoken in the Republic of Moldova;
- ▶ supporting the Moldovan diaspora.

BIR is responsible for ensuring respect for the legislation in relation with ethnic minorities, new legislation screening and consultations with the civil society organizations representing ethno-cultural groups on issues of interest as well as cooperation with the national institutions so as to ensure effective implementation of national and international commitments in the realm of minority rights protection.

In terms of these objectives, BIR directs its activities on consolidating and enhancing institutional capacity in the field of interethnic relations, in particular relating to the contribution to creation of necessary conditions for teaching of the State language to national minorities as well as the promotion of tolerance, respect for cultural and linguistic diversity, and the prevention and combating discrimination on the grounds of race, color, national or ethnic origin, elimination of xenophobia and ethnic prejudices.

¹⁰⁹ Constitutional Court, Decision No. 26 of 19 September 2013, available at: <http://lex.justice.md/md/350753>

¹¹⁰ http://ombudsman.md/sites/default/files/document/attachments/raport_tematic_autismul.pdf

¹¹¹ http://ombudsman.md/sites/default/files/document/attachments/raport_diz_2017_red_0.pdf

¹¹² http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKewiK7r6Slo_cAhWBSHQKHU4UDbYQFggyMAA&url=http%3A%2F%2Fwww.legislationline.org%2Fdocuments%2Fid%2F20947&usq=AOvVaw1BLdfVVKcCnsPskpFPYhoZ

II. INCLUSIVE EDUCATION IN THE REPUBLIC OF MOLDOVA

Primary school has an official entry age of seven¹¹³ and a duration of four grades. Secondary school is divided into two cycles: lower secondary (*gymnasium*) consists of grades 5 - 9, and upper secondary (*lyceum*) consists of grades 10 - 12. In principle, public education is free, and compulsory education encompasses one year of pre-primary, primary and lower secondary. Students sit for the Exam/Certificate of Gymnasium Studies at the end of grade 9, and the National exam/baccalaureate diploma at the end of grade 12. Although the Code of Education provides that compulsory education age is 18, in reality it is granted until the age of 16, i.e. until the end of the gymnasium. Most boys and girls in Moldova attend primary and secondary schools. Preschool education still lags behind, especially in rural areas.

These last years, Moldova's public expenditures on education as a share of GDP and total public sector spending were higher than in most countries in the European Union (EU) and the Organization for Economic Cooperation and Development (OECD)¹¹⁴. In 2015, spending on education amounted to 7 % of GDP—32% higher than the OECD average—and 18 % of total government expenditures—higher than in any EU country. With the support of the World Bank, the Republic of Moldova decided to optimize and reorganized its school system to counteract the sharp population declines over the last 20 years¹¹⁵. Between 2007 and 2016, around 6,000 classes were closed representing 194 schools (between 2010-2017) and almost 12,000 teaching staff's positions were removed¹¹⁶. The 2018 budget of the Ministry of Education, Culture and Research has significantly decreased to amount to 6,43% of the State budget.

Despite significant progress over the last years, children with disabilities, children with ethnic background, including Roma, children "left-behind" as a result of major migration¹¹⁷, children with HIV, children leaving in lower socio-economic status and in rural areas etc., still suffer of persistent deprivations and inequities. This report will focus on three vulnerable groups facing discrimination and stigmatisation: children with disabilities, Roma children and children belonging to linguistic minorities. Even if the situation of girls and young women, HIV-positive children, religious minorities and LGBT communities etc are not covered, they are also a matter of deep concern.

A. Inclusion of disabled children ¹¹⁸

According the National bureau of Statistics¹¹⁹, the estimated number of people with disabilities is 182, 000 people, including 11, 700 children aged 0-17 years. Persons with disabilities represent 5.1% of total population of the country and children with disability constitute approximately 1.7% of all children in Moldova. The disability rate is higher in rural areas (63%).

¹¹³ Article 27(4) of the Code of Education

¹¹⁴ Moldova, Preschool and General Education: Transitioning to a Decentralized Service Delivery Model, Selected Issues February 2018; <http://documents.worldbank.org/curated/en/106571523893165988/123660-REVISED-PUBLIC-P161676-MD-Decentralization-Analysis-final-for-imagebank-4-2018.docx>

See also World Bank. Education Sector Public Expenditure Review 2018

¹¹⁵ For more information, <http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1350667212030/Anna-Olefir-Education-Moldova.pdf>

¹¹⁶ <http://edu.gov.md/ro/content/reteaua-scolara-anul-2016-cati-elevi-si-cate-scoli-avem>

¹¹⁷ Due to the labour migration of their parents, 100,000 children do not grow up in a family environment, 19,700 children of them (close to 22% of the total child population) in Moldova live without any parental care

¹¹⁸ Moldovan Bureau of Statistics data, <http://www.statistica.md/newsview.php?l=en&id=5821&idc=168>; <http://www.statistica.md/newsview.php?l=ro&idc=168&id=5821>

¹¹⁹ The number of population for 2014-2017 is planned to be recalculated on the basis of the 2014 population and housing census data and the demographic indicators will be available starting August 2018.

The country has made great progress in reforming the system to shift towards more robust policy regarding inclusive education. Most children with special needs and disabled children are integrated into mainstream schools. Their number has tripled and is estimated to 10,130 while the number of institutionalized children has halved over the last decade. Strong efforts to reach inclusiveness into the initial and in-service training for teachers and the development of pilot experiences of accessible and inclusive schools have been made, in particular with the help of intergovernmental organisations, such as UNICEF¹²⁰ or the World Bank¹²¹ and NGOs, such as KEYSTONE¹²², MOTIVATIE¹²³ or LUMOS¹²⁴.

Nevertheless, children with disabilities and with ethnic background are frequently excluded or discouraged from schooling; many drop out the education system after the primary level¹²⁵. 60% of them within the 3-6 years age group are not in pre-schools and only one third graduate from school¹²⁶. Not many of them reach university. In 2017, only 50 disabled students were admitted to higher education financed from the State budget. Disabled children are also more deprived of quality education. Education and health facilities are often not properly equipped to facilitate their access to such services.

The number of pupils enrolled in special schools has decreased in 2016/2017 compared to the year of studies 2015/16 (by 16.7%). Nevertheless, children with sensory impairments, intellectual disabilities and multiple disabilities remain in segregated school settings or in social residential institutions¹²⁷. Out of these 860 pupils in the year 2016/17, the majority is mentally disabled (58.8%) while those suffering from low hearing impairment and poor sight respectively represent 18.4% and 14.7%. In the first half of 2017, only 38% of children with mental disabilities in the Republic of Moldova were integrated into the education system¹²⁸. This figure is rather stable over the last years: In 2017/2018 academic year, the vast majority of children in special institutions was intellectually disabled (59.1%).

After gaining independence, the Republic of Moldova inherited the Soviet residential system that was rooted in the medical model of disability and focused on the medical assessment of the person, ignoring the social aspects that are indispensable in the process of social inclusion. The reform regarding the inclusion of children with disabilities who have previously been excluded from the public education system, as well as those in need of special education in Moldova thus started after the ratification of the UN Convention on the Rights of Persons with Disabilities, i.e. after 2010¹²⁹. The public policy on the social protection of people with

¹²⁰ https://www.unicef.org/about/annualreport/files/Moldova_2016_COAR.pdf

¹²¹ <https://fism.gov.md/en/content/more-400-pupils-disabilities-and-special-educational-needs-20-moldovan-general-schools-have>

¹²² <http://www.keystonemoldova.md/en/what-we-do/inclusive-education.php>

¹²³ <http://motivatie.md/index.php?l=en>

¹²⁴ https://mecc.gov.md/sites/default/files/educatie_incluziva_final.pdf

¹²⁵ UNICEF Data, <https://data.unicef.org/country/mda/>; <https://www.unicef.org/moldova/children.html>

¹²⁶ Moldovan Bureau of Statistics 2016 data, quoted in UNICEF report, Evaluation of the Government of Moldova – UNICEF 2013-2017 Country Programme of Cooperation 2016, https://www.unicef.org/evaldatabase/files/Moldova_2017_001_UNICEF_Country_Programme_2013-2017_Evaluation_Report.pdf

¹²⁷ Figures mentioned in the national programme on social inclusion of people with disabilities for the years 2017-2022 (Programul national de incluziune socială a persoanelor cu dizabilități pentru anii 2017-2022)

¹²⁸ Figures mentioned in the People's Advocate report

http://ombudsman.md/sites/default/files/document/attachments/raport_diz_2017_red_0.pdf

¹²⁹ Social Inclusion Strategy for People with Disabilities (2010-2013) ; United Nations Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Moldova*, UN Doc. A/HRC/19/18, 2011; Human Rights Council, *Report of the Special Rapporteur on the Rights of Persons with Disabilities on her Mission to the Republic of Moldova*, UN Doc. A/HRC/31/62/Add.2, 2016

disabilities in the last years is directed towards diminishing and combating the phenomenon of social exclusion through different policy and strategic actions. UNICEF has allocated 2% of the per capita funding of schools to inclusive education to contribute to the inclusion of children with disabilities in mainstream schools in Moldova.

On 11 July 2011, the government adopted decision no. 523 approving the plan for the implementation of reforms relating to deinstitutionalization and the Program for the Development of Inclusive Education in the Republic of Moldova for the years 2011-2020, on the basis of which alternative services were developed, as well as support services: the Republican Center for Psycho-pedagogical Assistance (at central level), the Psycho-pedagogical Assistance Service (at district level), the resource centers and interdisciplinary committees (within the general education institutions).

The Ministry of Labor, Social Protection and Family (the current Ministry of Health, Labor and Social Protection) elaborated the Practical Guide on the evaluation, deinstitutionalization and social inclusion of persons with mental disabilities, approved by Order no.130 of 6 August 2013.

The Action Plan of the Government for the years 2016-2018 established the action of deinstitutionalisation of the persons with mental disabilities, by creating a system of community care¹³⁰. The Government of the Republic of Moldova also approved the National Program for Social Inclusion of Persons with Disabilities for the years 2017-2022 and the Action Plan for its implementation. The aim of this program is to develop accessible and inclusive services that meet the real needs of people with different types of disabilities. Also, progressive support staff for children with special educational needs, including children with disabilities, has been progressively employed. The Child Protection Strategy for the years 2014-2020 approved in particular the gradual stopping of the institutionalization of children aged 0-3 years and the continuous reduction of the number of children in residential care.

The main objective for the Moldovan authorities is the practical implementation of the strategic documents in the field.

Following the entry into force of Law no. 60 of 30 March 2012 (Articles 17-26), which regulates state accessibility policy, State institutions have taken a number of measures to implement these provisions. Thus, the Action Plan on the implementation of measures to ensure the accessibility of persons with disabilities to the social infrastructure was elaborated and approved by the Government Decision no. 599 of August 13, 2013. Subsequently, the State Inspection of Construction has set up a working group to carry out the planned verifications in order to meet the accessibility requirements of the social infrastructure, as well as to draw up recommendations on the harmonization of national and international norms. At the same time, the competent national authority in the field has developed a new Action Plan on the implementation of measures to ensure the accessibility of persons with disabilities to social infrastructure for the period 2017-2020.

Nevertheless, the Republic of Moldova faces various critical challenges impeding inclusive education, such as:

¹³⁰ Chapter Social assistance and family protection in the Government Action Plan for the years 2016-2018, approved by the Government Decision no. 890 of July 20, 2016 ; <http://lex.justice.md/md/365929/>

- ▶ the lack of financial resources;
- ▶ the lack of a minimum package of services for children with disabilities and their families;
- ▶ the lack or insufficiency of support staff (one assistant teacher and one social assistant for 10 disabled children in average) and of specialists (psychologist, psycho-pedagogue, interpreters)
 - Challenges relate particularly to low salary levels, which particularly make it difficult to recruit auxiliary staff and young teaching staff;
 - And unfavorable living conditions in rural areas (e.g., no running water/sanitation, heating, good roads, options for leisure for children and families), which impede recruitment and retention of personnel;
- ▶ lack of knowledge and motivation to apply modern learning approaches among more senior staff;
- ▶ the attitudinal barriers of the teaching staff in the process of integration of children with special educational needs;
- ▶ the need for continuing training of the teaching staff on how to interact with disabled children, especially those with mental deficiencies;
- ▶ the insufficient training of specialists from different sectors regarding accessibility, technologies and means of assistance etc.;
- ▶ the lack of reasonable accommodation adapted to the needs of children with disabilities and the lack of knowledge of and skills relating to inclusive education among staff;
- ▶ the lack of specific teaching materials;
- ▶ the fact that sign language is not adequately recognised as an official language and the lack of access to education for deaf children;
- ▶ the negative, discriminatory and stigmatizing attitude of citizens, administrative staff and teachers with disabilities;
- ▶ the low level of knowledge of human rights and the rights of persons with disabilities;
- ▶ the ineffective enforcement mechanisms and lack of active measures to ensure compliance with the legislation;
- ▶ the lack of accessibility to school buildings, sanitariums, information, materials, (wider desks, lower blackboards etc), communications and transportation;
 - The volunteers of the MOTIVAȚIE Association in Moldova organised a “marathon” with wheelchairs to assess the accessibility of schools in Chisinau. It was found out that 77% of the schools in this area were inaccessible.
 - The situation has worsened with the optimization reform: pupils shall be transported to neighboring localities due to the creation of circumscription schools but there are not enough resources to ensure the transportation of pupils, which has a disparate impact on disabled children.
- ▶ the lack of an effective State mechanism for evaluation, monitoring and accountability for compliance with building regulations and standards;
- ▶ the lack or insufficiency of social indicators to evaluate the effectiveness of public policy issues in the field (e. g. efficiency of social services), generating delays in the identification of problems and possible solutions;
- ▶ the lack of a national system for the collection and processing of statistical data on disability.

As a result, “inclusion is not necessarily synonymous with integration. Whilst they may be enrolled in a school, children with disabilities may not be fully integrated due to a lack of

necessary support facilities, poorly trained staff or discrimination from staff, students and parents”¹³¹. Although Law no. 60 on the social inclusion of persons with disabilities meant to protect the rights of persons with disabilities, many of its provisions remain only on paper.

B. Linguistic minorities

The use of mother tongue is an essential aspect to the identity of ethnic minorities.

Due to the Moldovan historical background, language has been politicized, leading to the “crystallization of two virtually exclusive forms of language-based identities”¹³². The main polarization is found between the speakers of Russian and of the State language, Romanian.

While Russian speakers are viewed as aspiring to closer ties with Russia, speakers of the Romanian State language are regarded as supporting a pro-European agenda and even possible unification with Romania. Many Moldovan citizens have no or poor knowledge of State language, which also suffers from a residual post-Soviet perception of its ‘inferiority’ to Russian. While there is no particular hostility towards speakers of Russian or other minority languages, Moldovan society remains divided along ethnic and linguistic lines. These main linguistic groups evolve in separate societal spheres. This leads to real language issues, especially within the field of education.

Three quarters of the population predominantly use Romanian rather than Russian (or other languages). National minorities representing 22% of the population significantly use Russian as main language of inter-ethnic communication. The remainders also speak Ukrainian, Gagauz and Bulgarian. While Romanian-speakers tend to be already bilingual, many Russian-speakers have failed to become so.

Children belonging to Moldova’s national minorities remain in the Russian-speaking camp. The teaching of minority languages is indeed provided only in schools with Russian as main language of instruction where the State language is thus taught as third language. Poor quality of State language education in minority language schools is unanimously voiced, referring to various shortcomings:

- ▶ the limited resources allocated;
- ▶ the lack of qualified, bilingual teachers;
- ▶ the lack of teaching materials and inadequate textbooks;
- ▶ limited incentives and opportunities to learn the language in regions where persons belonging to minorities are concentrated.

As a result, the professional future of linguistic minorities (including Russian-speakers) in Moldova seems compromised. An increasing number of graduates of Russian-language schools have no other choice but to leave Moldova for Russia or Transnistria to take and pass their baccalaureat and for their further studies.

Despite an increasing openness to the learning of the State language, particularly among young people and the Government Action Programme (2015-2018) giving priority to knowledge of culture, history, language and religion of both national minorities and ethnic majority, there is no efficient and comprehensive strategy and action plan for linguistic integration of persons belonging to national minorities at this stage.

¹³¹ http://eap-csf.eu/wp-content/uploads/Background-Analysis-Report_amended-18-01-2017.pdf

¹³² Federica Prina, Linguistic Divisions and the Language Charter - The Case of Moldova, European Centre for Minority Issues WORKING PAPER no. 64, March 2013; http://www.ecmi.de/uploads/tx_lfpubdb/Working_Paper_64_Final.pdf

Teaching of the Bulgarian, Gagauz and Ukrainian languages and cultures is provided for four hours per week in Russian-language schools¹³³ that are located in areas where persons belonging to national minorities live in substantial numbers. Some efforts have been made to enhance the availability of minority language education, including through the introduction of multilingual teaching methodology in pilot schools. Nevertheless school administration face difficulties in recruiting suitably trained teachers. Moreover, they are not always adequately supplied with high quality teaching and educational materials. These persistent issues led to a reduction in the number of students at such schools over recent years and the optimisation reform of the education system has also had a disproportionate impact as many of them closed down.

According to the Bureau of interethnic relations, there are about 300 schools in which the Russian language is the medium of instruction. Ukrainian is taught in densed Ukrainian places and the same for Gagauz and Bulgarian but this concern only history, mothertongue and ethnic literature. The other topics are in Russian. Ukrainian is taught in 40 schools, Gagauz in 40, Bulgarian in 30, Polish in 3, Hebrew and Yiddish in 2 and German in 2.

Minority languages are, for instance, still taught only in Russian-language schools, which leaves persons belonging to national minorities with inadequate opportunities for gaining full State language proficiency.

C. Roma children

Within the 2004 population census there were 12,271 people identified as Roma, representing 0.36% of the total population. Many national and international reports deplore the poor living conditions and the unfavorable social situation of the Roma population in the Republic of Moldova¹³⁴. Indicators measuring social exclusion in the Republic of Moldova reflect the fact that most Roma live in poverty. Employment rates and incomes among the Roma are currently well below those of the average population. The low level of education of the Roma population correlates directly with its level of poverty. Like poor children, Roma primarily live in remote rural settlements. School attendance reduces critically long with promotion to upper grades.

Even if not updated, it has been estimated that 47% of Roma children aged 7-15 were not enrolled in school¹³⁵. The attendance rates of Roma children at all school levels are much lower than those of non-Roma children: one-fourth at the pre-primary level, half at primary and lower secondary levels, and one-fifth at upper secondary level¹³⁶. Roma girls are disproportionately affected, resulting in only 63% of Roma women between 16 and 24 being literate, compared to 99% of non-Roma women in that age group¹³⁷. In 2017/2018, out of the 209 children dropping out school (55 on grades 1-4 and 154 for grades 5-9), 41 were Roma.

Roma face huge barriers in primary education. They lag behind in school attendance and performance at all levels. Parents do not have the means to purchase school materials, some migrate for seasonal work, other keep the children at home for helping them at home or childcare. It is also important to raise that due to formal criteria of enrolment such as the requirement of a

¹³³ The Ukrainian, Gagauz, Bulgarian languages are studied as a discipline 3 hours per week; the discipline « History, culture and traditions of populations: Russian, Ukrainian, Gagauz, and Bulgarian is taught 1 hour per week

¹³⁴ See for example the Report of the Special Rapporteur on minority issues on her mission to the Republic of Moldova, 2017; <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/004/38/PDF/G1700438.pdf?OpenElement>

¹³⁵ See D. Mihailov, *The health situation of Roma communities: analysis of the data from the UNDP/World Bank/EC Regional Roma Survey*, (UNDP, 2012). Available from www.undp.org/content/dam/rbec/docs/The-health-situation-of-Roma-communities.pdf. Quoted by the Special Rapporteur on minority issues on her mission to the Republic of Moldova in her report dated January 2017. <http://md.one.un.org/content/dam/unct/moldova/docs/pub/MinReport%20EN.pdf>

¹³⁶ United Nations Moldova (2013), "Roma in the Republic of Moldova in areas of their compact population"

¹³⁷ UNDP Moldova in co-operation with UN Women and OHCHR, *Study on the situation of Romani women and girls in the Republic of Moldova*, 2014

birth certificate, some Roma children cannot get enrolled because they do not have this document. When returning from migration, parents have to present a certificate proving school attendance for the period of absence, but most parents do not comply with this requirement. Cultural attitudes towards education also affect the schooling, such as child marriage of Roma girls. Roma children also face difficulties in school because they speak Romani or in some cases Russian but not the official language of instruction. Many of them do not understand Romanian at all. Even if preparatory class for Roma children have been created, schools have different practices and approaches to ensure pre-school education. There is no uniform practice at the national level.

BIR initiated the elaboration of the Action Plan on supporting the Roma population in the Republic of Moldova for 2011-2015¹³⁸. Education was considered as a key priority area. From January 2013, Roma community mediators were institutionalised. The Parliament then adopted the Law No. 69 from 5 April 2013 on supplementing Article 14 of the Law No.436-XVI of 28 December 2006 on local government, by which the local Council of the 1st level was given the power to decide on the establishment of the community mediator in the settlements populated compactly or jointly by Roma. Their role is to facilitate communication between Roma communities and public local authorities, to ensure a better access to available public services, such as education. Grassroot experience shows that wherever Roma mediators were active, their action was successful in increasing the enrollment of Roma children and limiting the number of child marriages.

Nevertheless, the hiring of 48 Roma mediators, which was considered to be a crucial step towards promoting the access to rights of Roma in the areas of education and social services at local level, has never been met. In early 2017, their number drop to 4 remaining mediators in service, in particular because of the decentralisation process leaving the responsibility of their remuneration to the local government. The financial and political crisis have prevented the implementation of this Action Plan.

On 9 June 2016, the Government adopted the Action Plan for support of the Roma population for the years 2016-2020. The action plan's objectives are:

- ▶ increasing the participation rate of Roma children, especially of Roma girls, in the pre-school and preuniversity education system;
- ▶ improving the educational process of Roma children (6-18 years) by compulsory schooling and reducing the rate of absenteeism and early school dropping.

The Human Rights Committee has expressed fears that this Plan would face similar challenges as the previous one¹³⁹.

Nevertheless, in 2017, the Bureau of interethnic relations defined a new budget to be submitted to the Ministry of Finances, estimated at 2,2 millions lei. It established the need for 44 mediators. In December 2017, a first forum was organised in order to describe their professional competences and duties. Even if at this stage, Roma mediators are still low educated and paid (about 2,000 lei per month), there is a willingness to increase their educational level and their salary. On January 2018, 26 mediators had already been appointed and 4 additional people were on the way to get a position.

In several UN reports, it has been identified that Roma children were being segregated in schools. The situation has improved in some way thanks to positive practices of transferring several Roma children from a segregated school (Vulcanesti) to mainstream schools (Cioresti) and a package of measures to end segregated education in Otaci in 2013. The Ministry of Education organised free transportation to children from localities densely populated by Roma, that are situated not less than 3 km from the nearest educational establishment. Nevertheless, some Roma parents still complain that their children are isolated in the classes and do not interact with classmates. Such situations may arise to discriminatory harassment.

¹³⁸ adopted by the GD Nr.494 of 8 July 2011 and amended by the GD Nr. 56 of 31 January 2012

¹³⁹ See CCPR/C/MDA/CO/3, parag. 12 b)

Chapter IV

RECOMMENDATIONS

1. Ratifying the following international and European legal instruments:

- ▶ Protocol No.12 of the European Convention of Human Rights;
- ▶ European Charter for Regional or Minority Languages;
- ▶ Optional Protocol to the Convention on the Rights of Persons with Disabilities;
- ▶ Optional Protocol to the Convention on the Rights of the Child;
- ▶ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

2. Reviewing legislation in order to bring it in full compliance with international and European standards:

- ▶ Amending the wording of article 16 of the Constitution to guarantee equality to all persons unless provided to law and not only to Moldovan citizens;
- ▶ Expressly including disability, state of health (including HIV/AIDS status), sexual orientation, gender identity, place of residence etc as prohibited grounds of discrimination into article 16 of the Constitution and the Law no. 121;
- ▶ Reframing the exception provided under 9(4) of the Law no. 121 to limit it to cases where adherence to a specific religion is a genuine requirement;
- ▶ Compiling in Law no. 121 the different forms of discrimination and their corresponding remedies;
- ▶ Including in the Code of Contraventions a larger range of discriminatory acts which shall be penalised, namely: racial segregation, incitement to discrimination, victimisation and acts of harassment;
- ▶ Translating the guarantee of accessibility in updated technical provisions by elaborating and approving the norms and standards regarding the accessibility of children with different types of disabilities to infrastructure, transport, information and communications;
- ▶ Recognizing sign language as a means of communication ;
- ▶ Amending the Code of Education to reflect the full transition to inclusive education, i.e.:
 - Ensuring that no child is refused admission to mainstream schools on the basis of disability;
 - Prohibiting the lack of reasonable accommodation as a form of discrimination
 - Better framing the option of home schooling that must be used only in the best interests of the child with special educational needs and whose quality must be guaranteed.

3. Improving the enforcement mechanism:

- ▶ Granting the CPEDEE the power to conducting on-site inspection and imposing penalties for discrimination acts;
- ▶ Increasing the level of fines to dissuade discrimination and harassment;
- ▶ Monitoring and sanctioning the media promoting discriminatory messages;
- ▶ Drafting a realistic road map with a timeframe to make schools, school buses, sanitary facilities and all public procurement processes relating to these facilities and public transports accessible (see also point 4 below);
- ▶ Sanctioning the physical and communication accessibility requirements including, when appropriate, withdrawal of the certificate for technical and professional attestation of the specialists in constructions in order to stop the faulty practice of approving design documents infringing relevant regulations on accessibility;
- ▶ Promoting strategic litigation and advocacy with the support of civil society under the umbrella of the CPEDEE in assisting children to obtain reasonable accommodation and equal access to an inclusive school.

4. Implementing accessibility requirements and providing reasonable accommodation:

- ▶ Eliminating all barriers preventing access of children with disabilities to the educational system i.e. provide physical access to all facilities (platform lifts and stair lifts to access classrooms on every floor of the building, ramps etc), including school canteens, boardings and sanitary, furniture and also transportation, administrative as well as examination procedures:
 - o Proceeding to an assessment of the accessibility of the infrastructure on the basis of a technical questionnaire;
 - o Elaborating, approving and implementing national and local programs in the fields of construction, transport, information and communications to ensure the accessibility of persons with different types of disabilities;
 - o Ensuring the control, assessment and monitoring by public authorities responsible for construction, transport, information and communication fields regarding compliance with the norms and technical standards of accessibility of persons with disabilities;
 - o Initial and continuous professional training of specialists in the fields of construction, transport, information and communications regarding the observance and application of norms and technical standards of accessibility of persons with disabilities.
- ▶ Creating a space in order for the disabled children to rest;
- ▶ Developing alternative teaching materials which are sensitive to differences in children, adapted textbooks and augmentative and alternative communication systems (braille, sign language).

5. Training:

- ▶ Organising continuous training on diversity, intercultural dialogue and inclusive education and its implementation (i.e. concept of reasonable accommodation and universal design) to school heads, teachers, administrative staff and school nurses;
- ▶ Training educators and teachers on inter-ethnic and intercultural tolerance and on the elimination of prejudices and attitudinal barriers;
- ▶ Providing methodological material assistance for teachers to deal with all children with special needs, including autistic children;
- ▶ Conducting training of teaching staff assisting or teaching children with hearing and hearing impairments using sign language;
- ▶ Training Roma community mediators in order to strengthen their capacity-building and to promote their professional qualification.

6. Allocating sufficient resources to:

- ▶ Provide a minimum package of educational support services (resource center, supporting teaching staff, personal assistants and community services) for each disabled enrolled in the educational institution, according to the child's needs in preschool, primary and secondary education level, in particular assessment and psycho-pedagogical, psychological and speech therapy services;
- ▶ Facilitate access to quality mobility aids, assistive equipments, devices and technologies for all children with disabilities;
- ▶ Develop non-educational support services such as free and accessible school buses, with adequate and flexible hours;
- ▶ Develop and provide counselling and career guidance services for disabled teenagers in educational institutions;
- ▶ Promote mother-tongue and bilingual education at all levels by qualified bilingual teachers;
- ▶ Provide effective access to full proficiency in the State language to all children, including Russian and Romani-speaking children and other linguistic minorities;
- ▶ Enhance access to quality teaching and learning of and in all minority languages using modern bilingual and multilingual teaching methodologies through adequate supplies of teaching materials and skilled teachers in all subjects;
- ▶ Expand access to early education in particular for children with disabilities and Roma children to combat exclusion;
- ▶ Organise preparatory classes for Roma children who do not attend pre-school;
- ▶ Organise tutoring classes for homework help and adapted recovering programs for children returned from seasonal migration;
- ▶ Hire additional teachers, speech therapists and psychologists in schools with a high number of Roma children;

- ▶ Implement positive measures for the successful Roma children that graduate 9th grades such as stipends and scholarships or awards;
- ▶ Ensure appropriate funding from the central budget for additional Roma community mediators.

7. Awareness-raising:

- ▶ Investing in assertive public campaigns to fight against societal stigma towards disabled and Roma children and to promote social inclusion and a human-rights based approach;
- ▶ Organizing information and awareness campaigns for Roma parents to enroll their children at school, including at pre-school;
- ▶ Including civic education into the curriculum in order for the children to be informed about their rights and the prohibition of trafficking and economic exploitation.

8. Ensuring and promoting:

- ▶ A bottom-up approach and the consultation of key stakeholders whenever inclusive education is at stake;
- ▶ The participation of Roma parents in the boards of administration of educational institutions;
- ▶ Registration of all births, including of Roma children, and alleviation of administrative and institutional burden for school enrolment;
- ▶ Comprehensive review of the school curricula and textbooks in order to include Moldovan cultural diversity (ex: module of the history, culture and traditions of the Russian, Ukrainian, Gagauz, Bulgarian, Roma and other ethnic groups in the Republic of Moldova) and inclusiveness (ex: civic education);
- ▶ Efficiency of the optional nature of religious classes, children having the right to choose or not this course and revising the religion course by integrating the principles of diversity, equality and non-discrimination.

9. Monitoring:

- ▶ Studying and documenting the continued obstacles to equal access to education experienced by Roma children and the phenomenon of discrimination and segregation against Roma children;
- ▶ Monitoring the level of absenteeism and drop out school rates and find out their causes in order to reduce and eliminate these practices;
- ▶ Monitoring the child labour rate through unannounced on site inspections of labour inspectorates in places where children are most frequently hired;
- ▶ Monitoring the quality of home schooling and distance learning procedures;
- ▶ Defining indicators to evaluate the effectiveness of inclusion and accessibility;
- ▶ Developing a system for collecting, analysing and disseminating disaggregated data on the inclusion of children with disabilities in the educational system.

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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