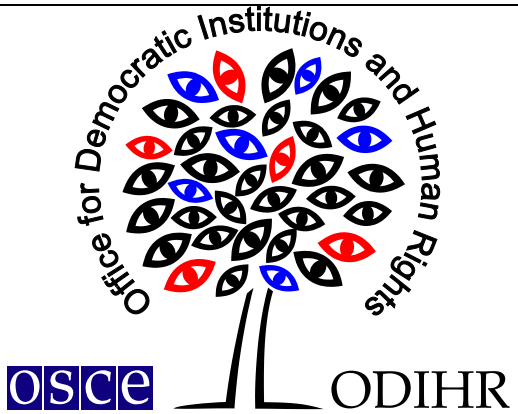
Warsaw, 19 December 2018 Opinion-Nr.: MIG-MDA/339/2018 [TO] www.legislationline.org	

PRELIMINARY COMMENTS ON THE DRAFT LAW ON INTEGRATION OF FOREIGNERS IN THE REPUBLIC OF MOLDOVA

ODIHR Preliminary Comments have benefited from contributions made by Dr Clíodhna Murphy, International Expert

OSCE Office for Democratic Institutions and Human Rights
Ulica Miodowa 10 PL-00-251 Warsaw, phone: +48 22 520 06 00; fax: +48 22 520 0605

Table of Contents

I. INTRODUCTION

1. On 2 November 2018, the Ministry of Internal Affairs of the Republic of Moldova sent to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) a request for an opinion on the Draft Law on Integration of Foreigners in the Republic of Moldova to assess its compliance with international human rights obligations and OSCE commitments.

2. On 9 November 2018, ODIHR Director responded to this request. Taking into consideration the time constraint, and in keeping with its methodology, ODIHR offered to prepare Preliminary Comments evaluating compliance of the Draft Law with OSCE human dimension commitments and international human rights obligations and standards.

3. Given the preliminary nature of these Comments, they do not constitute a full and comprehensive review of the entire legal and institutional framework governing the integration of foreigners. In view of the above, ODIHR would like to note that these Preliminary Comments do not prevent ODIHR from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation in the future.

4. These Preliminary Comments are based on unofficial translation of the Draft Law on Integration of Foreigners in the Republic of Moldova. Inaccuracies may occur in these Comments as a result of incorrect translations.

II. EXECUTIVE SUMMARY AND CONCLUSIONS

5. The Draft Law on Integration of Foreigners in the Republic of Moldova covers a wide range of integration issues. In general, the Draft Law aims to strike a balance between outlining migrants' responsibilities and rights, and corresponding State obligations. Some aspects of the Draft Law represent good human rights practice on integration, in compliance with International obligations and OSCE commitments, however some require further clarification or improvement.

6. In addition, as it is emphasised by the Committee for the Elimination of Racial Discrimination, the mere existence of integration policy in a State is not sufficient to satisfy international standards. States are required to ensure that effective measures to facilitate the integration of minority groups are put into place. For these reasons, it is important that the Moldovan authorities ensure that the integration measures offered to migrants are effective, meaningful and contribute to their overall integration.

7. Furthermore, as the parliament is anticipated to review the Draft Law in the near future, and given the impact that these Comments may have on the ongoing reform process, the relevant stakeholders are encouraged to ensure that they undergo extensive consultation throughout the drafting and adoption process.

8. To further improve the compliance of the Draft Law with international obligations and OSCE commitments, ODIHR makes the following key recommendations:

A. Consideration could be given to extend Articles 16, 17 and 21 to asylum seekers and/or undocumented migrants unless this is guaranteed by other legislation [par 26];

B. Article 10(7) is recommended to be reviewed [par 32];

C. the competent authorities are recommended to assess proportionality of the compulsory language requirements [par 33];

D. the provision on validity of language competence is proposed to be removed [par 35];

E. State language courses are recommended to be free of charge for certain vulnerable

groups [par 36].

9. These and a number of additional recommendations, which are included in these Comments (highlighted in bold), are aimed at further improving the compliance of the legal framework governing the integration of foreigners with OSCE commitments, and other international human rights obligations and standards.

III. INTERNATIONAL OBLIGATIONS AND OSCE COMMITMENTS RELATED TO INTEGRATION

10. The international obligations pertaining to the integration of foreigners are found principally in the 1951 UN Convention Relating to the Status of Refugees (Refugee Convention) and its Protocol; the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Social, Economic and Cultural Rights (ICSECR); and the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD).[1] In addition, obligations in this area specifically targeted at women and children are included in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (UNCRC).

11. The Refugee Convention is the only major international treaty to explicitly address the question of integration. Article 34 imposes a duty, as far as possible, on Contracting States to facilitate the assimilation and naturalisation of refugees. The Office of the United Nations High Commissioner for Refugees (UNHCR) further characterizes the refugee integration as a "dynamic and multifaceted two-way process which requires efforts by all parties concerned, including a preparedness on the part of refugees to adapt to the host society without having to forego their own cultural identity, and a corresponding readiness on the part of host communities and public institutions to welcome refugees and meet the needs of a diverse population."[2]

12. While the General Comments or Recommendations of the various UN Committees contain useful information on the rights of non-citizens and the principle of non-discrimination, there is little, which directly addresses integration policy. In contrast, the concluding observations of these treaty bodies on state reports often expressly mention integration-related issues and the concept of integration. While concluding observations are generally not understood as having legally binding effect, nevertheless, as outputs of a treaty body, they have a "notable authority, albeit unspecified", in particular where they purport to interpret treaty provisions.[3]

13. Specifically, the Human Right Committee (HRC) and the Committee on Economic, Social and Cultural Rights (CESCR) make observations related to integration. The HRC in particular frequently comments on integration-related issues, even if it does not always expressly refer to integration. These issues include family reunification; freedom of religion; and discrimination, xenophobia and racism. Similarly, the CESCR consistently refers to discrimination suffered by immigrants and members of ethnic minorities in the fields of housing, employment, health care and education. This approach views integration as a long-term and multi-faceted process, involving legal, social and cultural dimensions, rather than a process of cultural assimilation to be undergone by newly arrived migrants.

---

1 Other applicable documents include: the Office of the United Nations High Commissioner for Refugees, Executive Committee, Conclusion on Local Integration; the UN General Comment No. 15 of the Human Rights Committee: The position of aliens under the Covenant; the UN General Comment No. 20 of the Committee on Economic, Social and Cultural Rights: Non-discrimination in economic, social and cultural rights; and General Recommendation No. 30 of the Committee for the Elimination of Racial Discrimination: Discrimination Against Non-Citizens.

2 See the UNHCR Executive Committee, Conclusion on Local Integration 7 October 2005.

3 See the Concluding Observations of the United Nations Human Rights Treaty Monitoring Bodies, O'Flaherty, M.

14. In addition, the Committee for the Elimination of Racial Discrimination (CERD) conceives of integration in terms of an objective in itself and a relatively nuanced conception of integration is under construction in its concluding observations. The basic approach of the CERD is that States are required to ensure that effective measures to facilitate the integration of minority groups are put into place. These measures may not constitute forced assimilation or segregation, and must respect the cultural identity of migrants. A two-way conception of integration is favoured whereby a balance is maintained, between the responsibilities of the receiving State and its existing communities on the one hand, and those of the migrant in the integration process on the other. The CERD has also made more specific recommendations in relation to the role of political participation; access to nationality; the importance of labour market integration; and the protection of social and economic rights in the integration process. Finally, the Committee has emphasised the need to allocate resources to the development of integration policy.

15. Within the Council of Europe framework, the European Convention on Human Rights (ECHR) applies to all persons in the jurisdiction of Contracting States (Article 1), thus applying to migrants. The European Court of Human Rights (ECtHR) has considered integration issues primarily in the context of its Article 8 on the expulsion of and family reunification for non-citizens,[4] and in its Article 14 on non-discrimination jurisprudence.[5] It has confirmed that integration or social ties to the 'host state' will lead to an enhanced protection against expulsion for non-citizens under Article 8. In addition, a variety of Council of Europe Committee of Ministers Recommendations address broad issues concerning migrants, including access to health care,[6] employment[7] and interaction with the receiving society.[8]

16. OSCE commitments further protect and promote the rights of migrant workers. Specifically, in paragraph 22 of 1990 OSCE Copenhagen Document the participating States "agreed that the protection and promotion of the rights of migrant workers are the concern of all participating States" and "reaffirmed their commitment to implement fully in domestic legislation the rights of migrant workers provided for in international agreements to which they are parties."[9] Furthermore, OSCE commitments in the area of equality, tolerance and non-discrimination are relevant. Through these commitments, OSCE States have recognised, that successful integration policies "include respect for cultural and religious diversity and promotion and protection of human rights and fundamental freedoms"[10] and that "manifestations of intolerance and discrimination can undermine the efforts to protect the rights of individuals, including migrants, refugees and persons belonging to national minorities and stateless persons."[11]

17. Lastly, as part of the commitment undertaken through the Association Agreement, "[p]arties reaffirm the importance of a joint management of migration flows between their territories," and to focus on "the admission rules and rights and status of persons admitted, fair treatment and integration of lawfully residing non-nationals, education and training, and measures against

---

4 See, *Üner v. The Netherlands* (Application no. 46410/99).

5 See, *Gaygusuz v. Austria* (Application No. 17371/90).

6 Recommendation CM/Rec(2011)13 of the Committee of Ministers to member states on mobility, migration and access to health care.

7 Recommendation CM/Rec(2008)10 of the Committee of Ministers to member states on improving access of migrants and persons of immigrant background to employment.
Recommendation CM/Rec(2011)1 of the Committee of Ministers to member states on interaction between migrants and receiving societies.

9 See paragraph 22 of the 1990 OSCE Copenhagen Document.

10 Decision No. 2/05 on Migration (Ljubljana 2005).

11 Decision No. 10/07 on Tolerance and Non-Discrimination: Promoting Mutual Respect and Understanding (Madrid 2007). See also Ministerial Statement on Migration (Brussels 2006).

racism and xenophobia."[12]

IV. ANALYSES AND COMMENTS ON DRAFT AMENDMENTS

A. General Remarks

18. The Draft Law on Integration of Foreigners in the Republic of Moldova covers a wide range of integration issues. In general, the Draft Law aims to strike a balance between outlining migrants' responsibilities and rights, and corresponding state obligations. Specifically, the express inclusion of Section 2 (access to exercising the rights) addresses access to key human rights such as education, health care, social payments, recognition of qualifications and children's rights in line with international human rights obligations. The international obligations and standards emphasise the importance of access without discrimination to rights as protected within the ICCPR and the UNCRC. In addition, equal access for migrants to social assistance and security is protected in the ECtHR case-law on non-discrimination.[13] In this respect, the express acknowledgment of this right in Articles 18 and 19 of the Draft Law is particularly welcomed.

19. Other aspects of the Draft Law also represent good human rights practice on integration, in compliance with international obligations and OSCE commitments. For example, the amended Article 22 of the Draft Law clarifies that "[t]he integration program and the integration activities shall be established and implemented based on the needs of beneficiaries, with no discrimination and by respecting their cultural specificities." This is in keeping with the principle of non-discrimination enshrined in the UN human rights treaties.[14] The CERD Committee, for example, has specifically noted that integration policies must "respect and protect the cultural identities of persons belonging to national or ethnic minorities within its territory."[15]

20. Similarly, Article 37(3) provides that the relevant authorities will consult on a quarterly basis with civil society, international organisations and communities of foreigners. This mechanism could be an important means to ensure that integration is a truly two-way process which respects cultural specificities and the needs of migrant communities. The UN human rights treaty bodies have reiterated on many occasions the two-way nature of the integration process where the responsibility for integration should be borne both by the host State and by migrants in order to ensure the success of integration policy and full enjoyment of rights.[16] Forced assimilation is clearly prohibited by Article 27 ICCPR and Article 5 of the UNCERD.[17]

21. However, as is emphasised by the CERD, the mere existence of integration policy in a State is not sufficient to satisfy the demands of the UNCERD. States are required to ensuring that effective measures to facilitate the integration of minority groups are put into place.[18] For these reasons, it is important that the Moldovan authorities ensure that the integration measures offered to migrants are effective, meaningful and contribute to their overall integration, in a way that "makes the most of the potential arising from the multiple aspects and/or dimensions of

---

12 See the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova.

13 See *Gaygusuz v. Austria* (Application No. 17371/90, 16 Sept 1996); *Koua Poirrez v. France*, no. 40892/98, § 46, ECHR 2003-X; *Andrejeva v. Latvia* [GC], no. 55707/00, § 87, ECHR 2009; and *Ponomaryovi v. Bulgaria*, no. 5335/05, § 52, ECHR 2011.

14 See Article 26 of the ICCPR, Article 2(2) of the ICESCR, and Article 5 of the ICERD.

15 See Namibia, UN Doc CERD/C/NAM/CO/12 (19 August 2008), paragraph 24.

16 See the Netherlands, UN Doc CERD/C/NLD/19-21, 28 August 2015, paragraph 32.

17 See also Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Adopted by General Assembly resolution 47/135 of 18 December 1992); CCPR General Comment No. 23, "The rights of minorities (Art.27)" (8 April 1994); CCPR General Comment No. 15, "The position of aliens under the Covenant" (11 April 1986), at paragraph 7.

18 See the Periodic Report on Finland. UN Doc CERD/C/FIN/CO/19 (13 March 2009), paragraph 19.

everyone's identity."[19]

22. Among other provisions, Article 8(4) of the Draft Law warrants attention. This article states that the competent authority "may" hold guiding discussions with foreigners and identify their special integration needs. In addition, certain aspects of the Draft Law seem to place the obligation of integration directly on the individual migrant (Article 7). It is also unclear as to what end the 'special questionnaires' for assessing integration (Article 15) are to be used. The CERD has specifically criticised integration measures, which effectively shift the primary responsibility for integration onto immigrant communities.[20] The CERD has encouraged states parties "to ensure the participation of [national or ethnic minorities] in the design and implementation of integration policies and programmes, at both national and local levels."[21] Moreover, the Council of Europe Recommendation CM/Rec(2011)1 recommends that states ensure that policy makers and practitioners recognise and respect the complexity of diversity when seeking to enable migrants' involvement in wider society, especially when involving them in developing policies, services and interventions.

23. In addition, strong complementary measures to tackle discrimination against migrants are required to ensure full compliance with international obligations. The OSCE commitments related to equality, tolerance and non-discrimination require states to tackle "exploitation, discrimination, abuse and manifestation of racism directed towards migrants, with special attention to women and children",[22] including through legislation and law enforcement.[23]

24. Further, the Draft Law proposes to supplement the definition of the concept of integration (amending Article 3). It is difficult to assess the impact of the amendments without thoroughly reviewing the original law. Similarly, draft Article 10(7) states that "failure to fulfil the obligation stipulated in paragraph (6) may cease the delivery of this allowance from the state." While allocation of allowances and benefits may be subject to reasonable conditions, it is not clear what the "allowance" referred to here is. In particular, it is not clear whether this would mean that (a) a financial assistance would be withdrawn from the beneficiary of international protection; or (b) protection status could be withdrawn.

25. Lastly, as the parliament is anticipated to review this Draft Law in the near future, and given the impact that these Comments may have on the ongoing reform process, the relevant stakeholders are encouraged to ensure that proposed amendments undergo extensive consultation throughout the drafting and adoption process. As a preliminary remark, it should be noted that successful reform should be built on at least the following three elements: 1) clear and comprehensive legislation that meets international obligations and standards and addresses prior recommendations; 2) adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders; and 3) political commitment to fully implement the legislation in good faith. [24] ODIHR would like to stress that an open and transparent process of consultation increases the confidence and trust in the adopted legislation and in the state institutions in general.

B. Comments on Specific Aspects of the Draft Law

26. The amendment of Article 2 means that the Draft Law covers most key categories of

---

19 Recommendation CM/Rec(2011).1 .

20 See the Netherlands, UN Doc CERD/C/NLD/19-21 (28 August 2015), paragraph 32.

21 Namibia, UN Doc CERD/C/NAM/CO/12 (19 August 2008), paragraph 24.

22 Brussels Ministerial Council Decisions on Migration No. 6/06

23 Ljubljana Ministerial Decision No. 10/05 on Tolerance and Non-Discriminations: Promoting Mutual Respect and Understanding).

24 See paragraph 5.8 of the 1990 OSCE Copenhagen Document which requires "legislation, adopted at the end of a public procedure."

migrants, including those with temporary and permanent residence; stateless persons; and beneficiaries of international protection. The Information Note attached to the Draft Law suggests that this amendment widens the categories of foreigners who have access to integration measures. It, however, does not seem to guarantee protection to asylum seekers and undocumented migrants. These categories of migrants are generally covered by the universal instruments, and should at a minimum, have access to the rights provided for in Articles 16 (education), 17 (access to health care) and 21 (insofar as this article covers basic children's rights) of the Draft Law. In addition, the ECtHR has confirmed that to leave an asylum seeker in a position of destitution could constitute a violation of Article 3 ECHR.[25] ***Consideration could be given to extend Articles 16, 17 and 21 to asylum seekers and/or undocumented migrants unless this is guaranteed by other legislation.***

27. Amendment to Article 3, which provides the definition of integration, notes that acquisition of the citizenship of the Republic of Moldova is considered the final point of the integration process, which should be inclusive and participatory. This is in line with the approach of UNHCR, for example, which emphasises that naturalisation is the pinnacle of legal integration.[26] However, the social, economic and cultural aspects of integration may continue to be relevant after the acquisition of citizenship. This would ensure best practice and compliance with the concepts of integration contained in the OSCE commitments, soft law produced by UNHCR, and the approaches of the UN human rights committees.

28. Draft Article 5 details the integration measures available. These are wide-ranging and positive. Two caveats apply, however, to this analysis. The UN human rights bodies have cautioned states against employing integration strategies, which do not maintain "appropriate balance between the responsibilities of the State … and the responsibilities of immigrant communities."[27] Article 5(2) states that foreigners "shall" benefit from the integration activities, including "socio-cultural adjustment activities" and "integration plans and programs." While it is understood that these provisions are intended to benefit migrants, the CERD Committee has highlighted that well-intentioned measures should not have as a side-effect an "assimilationist effect that leads to the loss of cultural identities by those affected."[28] Secondly, they should also take into account the principle set out in the Council of Europe Recommendation of the Committee of Ministers CM/Rec(2011)1 which states that such activities should "facilitate diverse and positive interactions between migrants and receiving societies" and "create diverse and improved opportunities for public interaction."

29. Draft Article 7 provides that foreigners shall apply to integration centres and request to benefit from integration measures from the outset. It is unclear whether this is envisaged as a mandatory obligation and if so, what happens if a foreigner does not apply. As mentioned above, any such integration strategy should not be coercive in form.. The same comment applies to the guiding discussions and recommendations provided for in Article 8(4), and the meetings mentioned in Article 9. These articles would benefit from further review.

30. Furthermore, it is not clear if the socio-cultural adjustment reunions must respect diversity and promote a spirit of tolerance. More specifically, draft Article 10(6) and (7) provide that the reunions will be compulsory for beneficiaries of international protection and that failure to fulfil this obligation may "cease the delivery of this allowance". This raises a number of concerns.

31. First, it could constitute differential treatment of beneficiaries of international protection as compared with other categories of migrants, seemingly without objective justification. The

---

25 *MSS v. Belgium and Greece, (*Application No. 30696/09).

26 See UNHCR Executive Committee, Conclusion on Local Integration.

27 See the Netherlands, UN Doc CERD/C/NLD/CO/17-18 (25 March 2010),

28 See Denmark, UN Doc CERD/C/DNK/CO/18-19 (20 September 2010).

ECtHR has found that differential treatment of refugees may violate Article 14 of the ECHR in certain circumstances, albeit that the context in that case was a family reunification decision.[29]

32. Secondly, the most concerning aspect of this provision is Article 10(7), which provides that failure to fulfil the obligation outlined in sub-section (6) may cease the delivery of this allowance. If the allowance referred to is the protection status itself, cancellation or revocation of this status in this way would clearly fall outside the permissible grounds outlined in Article 1 of the Refugee Convention. If the allowance referred to is a monetary or other type of allowance, this would constitute a punitive measure, which would run contrary to the concepts of integration outlined by the UN treaty bodies. Finally, the ECtHR has found that to leave a person in a position of destitution may violate Article 3 of the ECHR.[30] ***It is recommended that Article 10 (7) be reviewed in light of these concerns.***

33. Draft Article 11(1) provides that knowledge of the state language is a compulsory pre-requisite for granting the right to permanent residence. This is a practice employed by many European states. However, a general observation is that measures intended to facilitate learning the state language should not have an "assimilationist effect that leads to the loss of cultural identities by those affected."[31] In addition, paragraph 34 of the 1990 OSCE Copenhagen document provides that the "participating States will endeavour to ensure that persons belonging to national minorities….have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation." The CERD is also wary of lack of proficiency in the state language being used as a barrier to naturalisation.[32] ***It would therefore be recommended that the competent authorities assess proportionality of the compulsory language requirements.***

34. The Draft Law clarifies in Article 11(5) that foreigners who are retired and persons with disabilities will be exempt from the compulsory language requirement for permanent residence. While this is welcomed, it should be considered whether the requirement might also pose a particular obstacle for vulnerable groups, such as women who have been deprived of accessing education or persons who are illiterate.[33] The CERD has indicated that such discriminatory effects of integration testing would not be in conformity with the ICERD.[34] ***It is therefore recommended that the particular obstacles faced by vulnerable groups be fully considered and addressed through appropriate and reasonable accommodations and/or exemptions.***

---

29 See *Hode and Abdi v. the United Kingdom* (Application No. 22341/09)

30 *MSS v. Belgium and Greece (*Application No. 30696/09).

31 See Denmark, UN Doc CERD/C/DNK/CO/18-19 (20 September 2010).

32 See Norway, UN Doc CERD/C/NOR/CO/18 (19 October 2006), para. 19, where the Committee states: While noting the importance of adequate command of the State language as a vehicle of social integration, the Committee is concerned about the strictness of the language requirements for acquiring Norwegian citizenship in the new Nationality Act (art. 5 (d) (iii)).

33 In paragraph 40.5 of the 1991 OSCE Moscow Document the participating States agreed to "establish or strengthen national machinery, as appropriate, for the advancement of women in order to ensure that programmes and policies are assessed for their impact on women." Similarly, the participating States have agreed to "Consider developing appropriate programmes for those who have not completed primary school or are illiterate" (Maastricht 2003 Decision No. 3/03: Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area).

34 The Committee is concerned that the requirement of the Civic Integration Examination Abroad poses a particular obstacle for persons in vulnerable situations, such as women who have been deprived of accessing education, persons who are illiterate or persons using a different alphabet, which is not in conformity with the Convention." (paragraph 29) It recommends that "the State Party ensure that policies aimed at the integration of migrants are not discriminatory in effect" and "encourages the State party to discontinue the CIEA and allow migrants to take the CIE in the State Party without discrimination" (paragraph 30). See the Netherlands, UN Doc CERD/C/NLD/19-2 (28 August 2015).

35. In addition, the certificate of participation and evaluation of language competence is valid for three years (Article 11.4). It is not clear whether the person would be required to be 're-assessed' at that point. This would appear unnecessary to pursue the legitimate aims pursued by the state language certificate: if language skills have been evaluated as satisfactory on one occasion it is difficult to see how these skills could worsen. ***It is recommended to remove provision on validity of language competence.***

36. Furthermore, draft Article 11(9) provides that the state language courses are free of charge for beneficiaries of international protection. They are 'against payment' for those with temporary or permanent residence rights or stateless persons. UN human rights bodies have emphasised the importance of access to state language learning courses as an essential integration tool for migrants. In its 2014 concluding observations on the periodic report of Estonia, for example, the CERD Committee recommended the provision of free-of-charge language courses for persons belonging to minorities and persons with undetermined citizenship.[35] ***It is therefore recommended that state language courses should be free of charge for vulnerable groups.***

37. Draft Article 12 provides for the basic principle of equal treatment for foreigners accessing the labour market. However, a number of aspects of Article 12 could raise concerns. In particular, access to the labour market for asylum seekers is not covered in the Draft Law so it is unclear as to what the situation is in Moldova for asylum seekers wishing to enter the labour market. While many states do not afford asylum seekers access to the labour market immediately, a complete and indefinite ban on asylum seekers working may raise issues under international human rights obligations. For example, in its concluding observations on Romania, the CESCR expressed concerns regarding the labour market integration of asylum seekers and recommended that the State party take the appropriate steps to amend its legislation allowing asylum seekers to obtain a work permit within one year after their arrival in the State party.[36]

38. In addition, draft Article 12(6) states that in the case of holders of a temporary residence permit for work shall benefit from various integration activities, while "the employer is a party responsible for the integration of the migrant worker". It is not immediately clear form this draft provision what are the rights and obligations of the employer in this process, how these obligations should be implemented and what would happen if it fails to do so. In addition, the vague definition of the responsibility of the employer may conceivably contribute to a relationship of subordination and vulnerability of the worker *vis-a-vis* the employer. The need to protect migrants' rights in the workplace has been noted by human rights monitoring bodies on many occasions. For example, the CERD expressed concerns regarding discrimination in the labour market in its concluding observations on Italy, where it noted that "continued physical and financial exploitation of migrants without fear of sanctions, and migrants" lack access to effective and appropriate legal protection against abuse and exploitation.[37] ***It is recommended that the relevant sentence be removed.***

39. Draft Article 13 recognises the importance of access to citizenship as a tool of integration, in line with Article 34 of the Refugee Convention and the CERD Committee's General Recommendation on Discrimination Against Non-Citizens. In addition, it appears that on renewal of migrants' right of residence, as provided in draft Article 15, their degree of integration will be assessed, but it is unclear what impact, if any, this would have on the renewal process. ***This would benefit from further clarification.***

40. Draft Article 16 stresses the importance of education as an integration tool. Beneficiaries of international protection are granted equal treatment with Moldovan citizens. However, this Article

---

35 See Estonia, UN Doc CERD/C/EST/CO/10-11 (22 September 2014), paragraph 9(b).

36 See Romania, UN Doc E/C.12/ROU/CO/3-5 (9 December 2014), paragraph 12.

37 See Italy, UN Doc CERD/C/ITA/CO/19-20 (7 February 2017).

does not appear to cover the question of the conditions under which other categories of foreigners would have access to compulsory forms of education. It is also unclear whether all other foreigners would be required to pay tuition fees for all forms of education under Article 16(5). ***Consideration could be given to revise this provision as this could significantly limit access to primary and secondary education.***

41. Draft Article 17 provides for equal treatment (as compared to citizens of Moldova) in respect of access to health care for permanent residents and beneficiaries of international protection. Those with international protection have the compulsory premium supplied by the State. It is noted that both, the CERD Committee and the CESCR, stress that States parties should respect the right of non-citizens to an adequate standard of physical and mental health by, *inter alia*, refraining from denying or limiting their access to preventive, curative and palliative health services.[38] The Council of Europe has also emphasised the importance taking "measures to increase the accessibility of health services."[39]

42. Under draft Article 21(1), minors shall have access to compulsory education on the same basis as citizens of the Republic of Moldova. In addition, Under Article 21 (3) minors, who at the time of enrolment into an educational institution do not have all the necessary documents for enrolment, shall be permitted to attend the school under their parents' obligation to submit the requested documents within a reasonable term. Given the peculiarity of the category of beneficiaries of international protection, this provision shall not be mandatory in their case," and those with international protection will benefit from a free language initiation and learning course (Article 21(4)).

[end of text]

[38] See the General Comment N° 14 (2000) on the right to the highest attainable standard of health, and the General Recommendation N° 30 (2004) on non-citizens.

[39] See the Council of Europe Recommendation CM/Rec(2011)13 of the Committee of Ministers to member states on mobility, migration and access to health care.