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## CORRESPONDENCE OF NATIONAL LEGISLATION WITH ILO/EU STANDARDS REGARDING NON-DISCRIMINATION AND GENDER EQUALITY AT WORK

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***Abstract.** Currently, ensuring and continuously promoting equal opportunities between women and men in the field of labor relations is becoming more and more visible, both at the international and at the national level. This fact is confirmed by the multiple initiatives in the field, undertaken by international organizations, by the approval of various national normative acts and strategic documents. Republic of Moldova also has a developed legal framework that ensures equal opportunities for women and men, including in the field of labor relations. Several strategic documents aimed at addressing the issues related to ensuring equal opportunities between women and men in labor relations were approved. However, despite all the efforts undertaken by the public authorities of the Republic of Moldova, it can be observed that the situation on the labor market cannot be characterized as a successful situation in terms of overcoming gender inequalities.*

**Keywords:** Gender equality, work legislation, labor relations, CEDAW Convention.

**JEL Classification:** J8

### **Introduction**

Equality of opportunities between women and men is a concept that involves ensuring equality of rights and opportunities for women and men in the multitude of existing social relations, including within labor relations, by eliminating all social barriers that affect their achievement. The very content of the concept of human development advocates equal opportunities for women and men in all areas of life – economic, social, cultural and political. It opposes discrimination against women, the violation of their rights and their specific dangers, such as personal safety, domestic violence or sexual abuse, etc.

Not in vain, since the launch of the Universal Declaration of Human Rights, on December 10, 1948, through which human rights and freedoms were proclaimed "without any distinction (distinction of race, color, sex, language, religion, political opinion or any other opinion, of national

or social origin, wealth, birth or any other circumstances"<sup>18</sup>, ensuring and promoting equal opportunities between women and men becomes a new philosophy, a human value that registers an accelerated development over the years and, therefore, new contents, an objective that is present, practically, in all the development strategies of the countries of the world in recent years.

It should be mentioned that, at the moment, the Republic of Moldova has a developed legal framework that ensures equal opportunities for women and men, including in the field of labor relations. The specific national framework of the Republic of Moldova is based on the Constitution of the Republic of Moldova (art. 16)<sup>19</sup>, the Labor Code (art. 8, art. 10)<sup>20</sup>, Law no. 121 regarding ensuring equality<sup>21</sup>, etc. In 2006, Law no. 5 "On ensuring equal opportunities between women and men"<sup>22</sup> which aims to ensure the exercise of equal rights between women and men in the political, economic, social, cultural sphere, in other areas of social life, in order to eliminate all forms of discrimination according to the criterion of sex.

Several strategic documents aimed at addressing the issue of ensuring equal opportunities between women and men in labor relations were approved, including the Strategy for Ensuring Equal Opportunities between Women and Men<sup>23</sup>, the National Employment Strategy<sup>24</sup>, the Development Strategy "Moldova 2030"<sup>25</sup>.

However, despite all the efforts undertaken by the public authorities of the Republic of Moldova, it can be observed that the situation on the labor market cannot be characterized as a successful situation in terms of overcoming gender inequalities. Various research and analytical studies<sup>26</sup> show major discrepancies between women and men in the labor market that cause negative effects on well-being and financial independence, especially among women. It is about cases of discrimination, harassment or gender differences in the field of employment relations, in particular, in the field of employment, training and professional career or remuneration for work.

The purpose of this article is to highlight some deficiencies of the legislative framework in the field of labor relations in the Republic of Moldova regarding the provision of equal opportunities between women and men in relation to the new provisions of the international normative acts, as well as the causes, why the provisions international agreements inserted in the legislation of the Republic of Moldova regarding the provision of equal opportunities between women and men are not respected. The article provides a gender analysis of the current normative framework in the Republic of Moldova in the field of equal opportunities and treatment between women and men on the labor market. The article ends with the formulation of some recommendations that would contribute to overcoming the shortcomings of the legislative

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<sup>18</sup> UNIVERSAL DECLARATION OF HUMAN RIGHTS of December 10, 1948, (ohchr.org)

<sup>19</sup> The Constitution of the Republic of Moldova, adopted on July 29, 1994 [Constitutia\\_RM\\_RO.pdf \(presedinte.md\)](#)

<sup>20</sup> Labor Code of the Republic of Moldova, COD No. CM154/2003 of 28.03.2003 [CM154/2003 \(legis.md\)](#)

<sup>21</sup> Law no. 121 of 25.05.2012 "On ensuring equality  
[https://www.legis.md/cautare/getResults?doc\\_id=106454&lang=ro](https://www.legis.md/cautare/getResults?doc_id=106454&lang=ro)

<sup>22</sup> Law no. 5 of 02/09/2006 "On ensuring equal opportunities between women and men" [LP5/2006 \(legis.md\)](#)

<sup>23</sup> Strategy on Ensuring Equal Opportunities between women and men 2017-2021, [intr16\\_85.pdf \(gov.md\)](#)

<sup>24</sup> National Strategy for Employment [156 \(Hotărâre cu privire la aprobarea Strategiei naționale privind ocuparea forței de muncă pentru anii 2017–2021\).pdf \(usmf.md\)](#)

<sup>25</sup> "Moldova 2030" Development Strategy [strategia\\_nationale\\_de\\_dezvoltare\\_moldova\\_2030-t.pdf \(gov.md\)](#)

<sup>26</sup> UNEQUAL WORK! An analysis of gender gaps in the labor market from the perspective of employers, employed people, and the unemployed [MUNCA INEGALĂ! O analiză a decalajelor de gen pe piața muncii din perspectiva angajatorilor, persoanelor angajate și ale celor neangajate - Centrul Parteneriat pentru Dezvoltare \(progen.md\)](#)

framework and to the achievement of equal opportunities and equal treatment between women and men in the field of labor relations.

### **International legislative framework on non-discrimination and gender equality at work**

The harmonization of national legislation in relation to the provisions of current international norms in the field of gender equality, as well as ensuring the adequate implementation of this legislation is an objective assumed by the Republic of Moldova as a member of the UN, the Council of Europe, other international organizations, for which equal opportunities between women and men is a key value in their goals. Currently, the Republic of Moldova has a specific legal framework that addresses equal opportunities between women and men, including in the field of labor relations. In this context, the Republic of Moldova has undertaken a series of commitments to international partners to implement policies aimed at reducing gender inequalities in the field of labor relations. Starting from 2016, the Country Program on Decent Work is being implemented in Moldova, which comes to support initiatives at the national level to facilitate equal access of women and men to the labor market. It is, in particular, about the EU-Moldova association agreement, signed in June 2014 and then ratified in 2016<sup>27</sup>, by which the Republic of Moldova undertook to progressively bring its national legislation closer to the EU legislation in the field of employment, social policy and equality of chances.

Since the launch of the Universal Declaration of Human Rights, on December 10, 1948, through which human rights and freedoms were proclaimed "without any kind of distinction, such as, for example, race, color, sex, language, religion, political opinion or any other opinion, of national or social origin, wealth, birth or any other circumstances"<sup>28</sup>, ensuring and promoting equal opportunities between women and men becomes a new philosophy, a human value that registers an accelerated development and spread over the years and , therefore, new contents, an objective that is present in practically all the development strategies of the countries of the world in recent years.

Ensuring and promoting equal opportunities between women and men has become even more relevant since December 18, 1979, when the "Convention on the Elimination of All Forms of Discrimination against Women" (CEDAW)<sup>29</sup> was adopted in New York by the United Nations General Assembly, UN convention that reaffirms trust in fundamental human rights, in the dignity and value of the human person, in the equality of rights between men and women. Through this convention, a series of rights and freedoms reflected in the Universal Declaration of the Rights of Man and Citizen are reaffirmed which affirms the principle of non-discrimination and proclaims that all beings are born free and equal in dignity and rights. The Republic of Moldova joined the Convention on July 31, 1994, having been ratified by Parliament Decision no. 87-XIII of 28.04.1994, and inserted into the national legislation.

The CEDAW Convention is one of the most ratified conventions in the world (187 member states), surpassed only by the Declaration of the Rights of the Child. Based on this convention, a

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<sup>27</sup> [ACORD DE ASOCIERE între Uniunea Europeană și Comunitatea Europeană a Energiei Atomice și statele membre ale acestora, pe de o parte, și Republica Moldova, pe de altă parte \(europa.eu\)](#)

<sup>28</sup> [DECLARATIA UNIVERSALA A DREPTURILOR OMULUI \(ohchr.org\)](#)

<sup>29</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted on 18 December 1979, [CEDAW romana 1 \(gov.ro\)](#)

series of general recommendations were launched, aiming to clarify those aspects of women's rights that need special attention.

On May 11, 2011, the Council of Europe adopted the **Istanbul Convention on preventing and combating violence against women and domestic violence**<sup>30</sup> (ratified by the Republic of Moldova on January 31, 2022), which aims to prevent violence, protect victims and prosecute offenders. The Istanbul Convention or the International Convention on Combating Violence against Women and Domestic Violence states that the tolerance and non-punishment of acts of violence against women such as rape, domestic violence, sexual harassment, forced marriage or forced sterilization constitute violations of human rights and forms of discrimination on the basis of gender.

The International Labor Organization (ILO) also plays a rather important role in ensuring equal opportunities between women and men in the field of labor relations. The ILO is a subdivision of the United Nations, which is particularly concerned with labor relations issues. Having been established in 1919, together with the League of Nations, it was in line with the aspirations of the countries of the world for social transformation.

Today, the main objective of the International Labor Organization (ILO) is to empower women and men to obtain decent and productive jobs that are free, fair, stable and based on respect for human rights. In the context of the global economic crisis, the ILO puts the issue of employment promotion at the center of economic policies. The ILO mandates the use of macroeconomic tools to prevent further increases in unemployment, creating more opportunities to obtain work and decent incomes. The main instruments of intervention of the International Labor Organization are the Conventions and Recommendations, international normative acts which, being ratified by the governments of the countries, have a binding character, being inserted into the national legislation. In this context, the ILO is doing everything to enable states to extend social protection to all levels of society and improve working conditions. Among the most important Conventions relevant to the promotion of equal opportunities between women and men in the field of labor relations can be named:

**ILO Convention no. 100, regarding equal pay for male workers and female workers for work of equal value**<sup>31</sup>, adopted on June 29, 1951 (ratified by the Parliament of the Republic of Moldova through Law no. 610-XIV of 01.10.1999).

**ILO Convention no. 111, regarding discrimination in the field of employment and the exercise of the profession**<sup>32</sup>, adopted on June 25, 1958 (ratified by the Parliament of the Republic of Moldova through Law no. 593-XIII of 26.09.1995).

**ILO Convention no. 189, on decent work performed by domestic workers**<sup>33</sup>, adopted on June 16, 2011. It entered into force on September 5, 2013. The given instrument aims to guarantee domestic workers the right to a fair wage, social security, equal treatment, the right to organize

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<sup>30</sup> EU Convention (Istanbul) on preventing and combating violence against women and domestic violence [Convention 210 Romanian \(coe.int\)](#)

<sup>31</sup> ILO Convention no. 100, regarding equal pay for male and female workers for work of equal value [Microsoft Word - 100.doc \(gov.ro\)](#)

<sup>32</sup> ILO Convention no. 111, regarding discrimination in the field of employment and the exercise of the profession, [Microsoft Word - 111.doc \(gov.ro\)](#)

<sup>33</sup> [Convention C189 - Domestic Workers Convention, 2011 \(No. 189\) \(ilo.org\)](#)

and to negotiate collectively and the right to a dignified life. The Convention will be an important tool that signatory states can use to align their national laws with international standards for the protection of domestic workers, including migrant domestic workers. For the Republic of Moldova Convention no. 189 is relevant in the context where a large part of migrant women workers are employed specifically in the field of domestic work. At the moment IOM Convention no. 189 is not ratified by the Parliament of the Republic of Moldova.

Convention no. 189 is accompanied by IOM Recommendation of Domestic Workers no. 201, which establishes much more specific measures to ensure compliance with the provisions of the Convention.

**ILO Convention No. 190 on violence and harassment at work**<sup>34</sup>, adopted on 21 June 2019. This new Convention protects all workers, regardless of their contractual status; trainees, apprentices, licensed workers, volunteers and job seekers. It places a strong emphasis on gender-based violence. Women are disproportionately affected by workplace violence and harassment. It applies to all sectors, public or private, in urban or rural areas, of the formal or informal economy. Its field of activity is the world of work, which encompasses much more than just the workplace. It is the first international standard to end violence and harassment in the world of work. It believes that everyone has the right to develop in the world of work without violence and harassment. The Convention will fill in the existing gaps in national legislation. At the moment IOM Convention no. 190 is not ratified by the Parliament of the Republic of Moldova.

Ensuring equal opportunities between women and men is one of the fundamental values of the European Union, a fact enshrined in Article 2 and Article 3 paragraph (3) of the Treaty on European Union which stipulates that equality between women and men is a constitutive principle of the EU. It is an essential requirement for a stable democracy.

The European Union aims to integrate this principle in all its activities. At the same time, equal treatment between women and men is a fundamental right, reflected in art. 23 of the Charter of Fundamental Rights of the European Union, but also a precondition for respecting other fundamental rights and freedoms. In addition, it is a factor of economic growth, necessary for a sustainable, equitable and inclusive development.

Currently, through the Strategic Commitment for Gender Equality 2016-2019, the European Commission has determined that it will continue to give importance to the five priority thematic areas previously identified and defined in the Commission's Gender Equality Strategy 2010-2015:

- increasing women's participation in the labor market and equal economic independence for women and men;
- reducing the difference in remuneration, earnings and pensions between women and men and therefore combating poverty among women;
- promoting equality between women and men in the decision-making process;
- combating gender-based violence and supporting and protecting victims;
- promoting gender equality and women's rights worldwide.

Ensuring equal opportunities between women and men occupies a rather important place in various strategic documents, including the Sustainable Development Goals, launched by the UN in

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<sup>34</sup> [Convention C190 - Violence and Harassment Convention, 2019 \(No. 190\) \(ilo.org\)](https://www.ilo.org/convention/C190)

2015. Thus, Goal 5 Gender equality promptly stipulates the elimination of all forms of discrimination against women and girls; preventing and eliminating violence against girls and women, including human trafficking; eliminating early and forced marriages with children, etc., targets that are also present in the strategic documents of the Republic of Moldova (Moldova 2030)<sup>35</sup>. And Goal 10. Reduced inequalities, advocate for real equality between women and men by empowering and promoting the social, economic and political inclusion of all, regardless of age, gender, disability, race, ethnicity, origin, religion or economic or other status the nature; ensuring equal opportunities and reducing inequality of outcomes, including by eliminating discriminatory laws, policies and practices, and promoting appropriate legislation, policies and actions in this regard; the adoption of policies, especially fiscal, wage and social protection, and the progressive achievement of greater equality; ensuring a legal, fair, well-informed hiring process for migrants.

#### **Correspondence of the national legislative framework with international norms regarding non-discrimination and gender equality at work**

Since the declaration of independence, for the Republic of Moldova the problem of eradicating discrimination against women and ensuring equal opportunities between women and men has become a major task of practically all governments. This fact is confirmed by the adoption over time of multiple laws that contained provisions related to the issue in question. At the same time, by joining several international organizations for which gender equality is a key value, by ratifying several international agreements and normative acts, including the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (ratified on 28.04 .1994) The Republic of Moldova was motivated to adjust, gradually, its legislative framework and policies with international norms advocating for the elimination of all forms of discrimination and ensuring equal opportunities between women and men that were periodically launched by international organizations. Since the issue of gender refers to practically all areas of social life, the normative acts of the Republic of Moldova in terms of ensuring equal opportunities between women and men have covered practically all these areas of social life: the labor market, the balance between professional life and family, gender and domestic violence, access to justice, education, health, balanced participation in public life and access to leadership positions, etc.

The national legislative framework of the Republic of Moldova specific to the issue of gender equality is based on the Constitution of the Republic of Moldova, in which Article 16, Equality stipulates:

- (1) Respecting and protecting the person is a primary duty of the state.
- (2) All citizens of the Republic of Moldova are equal before the law and public authorities, regardless of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social origin.

With regard to ensuring equal opportunities between women and men in the field of employment relations, the equality clauses of the Constitution of the Republic of Moldova are supplemented with the following provisions of the Labor Code (No. 154 approved on 28.03.2003):

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<sup>35</sup> [strategia nationale de dezvoltare moldova 2030-t.pdf\(gov.md\)](#)

#### Article 8 Prohibition of discrimination in the field of work

On February 9, 2006, the Parliament of the Republic of Moldova adopted Law no. 5 regarding ensuring equal opportunities between women and men. The purpose of this law is to ensure the exercise of their equal rights by women and men in the political, economic, social, cultural and other spheres of life, rights guaranteed by the Constitution of the Republic of Moldova, in order to prevent and eliminate all forms of discrimination according to the criterion of sex. In a way, this law completes the legislative framework of the Republic of Moldova with provisions of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was ratified on April 28, 1994. The given law had a more complex character and aimed to ensure equality of opportunities between women and men in all areas of social life. Regarding labor relations, law no. 5 comes with Article 9. Access to employment; Article 10. Cooperation of the employer with the employees and with the union representatives; Article 11. Discriminatory actions of the employer; which, in a way, completes the provisions of the Labor Code.

In fact, the given law was followed by another law – Law no. 121 of May 25, 2012 Regarding ensuring equality which included a much wider spectrum than equal opportunities between women and men. The need for the adoption of this law consisted in creating the necessary framework for Directive 2000/43/EC of the Council of Europe of June 29, 2000, implementing the principle of equal treatment between persons, regardless of race or ethnic origin, and Directive 2000/ 78/CE of the Council of Europe of November 27, 2000 creating a general framework in favor of equal treatment in terms of employment and employment.

The adoption of Law no. 121 "On ensuring equality" was conditional on compliance with commitments to international partners, especially to the European Union, to implement policies aimed at reducing gender inequalities. It is, in particular, about the signing of the EU-Moldova association agreement, signed in June 2014 and then ratified in 2016, through which the Republic of Moldova undertook to progressively bring its national legislation closer to the EU legislation in the field of employment, social policy and equality of chances. Starting from 2016, the Country Program on Decent Work is being implemented in Moldova, which comes to support initiatives at the national level to facilitate equal access of women and men to the labor market.

There are other normative acts that contain relevant provisions, express or with indirect impact for the implementation of the principle of gender equality. Such laws from the Republic of Moldova concerning labor relations, such as: Law No. 847 of 14.02.2002 on salary; Law No. 105 of 14.06.2018 regarding employment promotion and unemployment insurance; Law No. 180 of 10.07.2008 regarding labor migration, although it does not expressly stipulate the issue of ensuring equal opportunities between women and men, however they are supplemented with the provisions of special laws oriented towards the given issue (Law no. 5 and Law no. . 121).

Therefore, it can be concluded that the Republic of Moldova has a normative framework adapted to the new rigors related to the policy of ensuring gender equality. However, the existence of a developed normative framework does not yet mean that it is fully applied. There are a number of problems related to compliance with the normative framework related to ensuring equal opportunities between women and men in the field of labor relations, including the functionality of competent institutions in applying the existing national legislation and overcoming the problem

in question. The duties and competences of the institutions empowered to ensure equal opportunities between women and men on the labor market and the application of national legislation in the field, as well as the existing challenges and impediments in achieving these duties, are described below.

### **Intervention methods of the State Labor Inspectorate in ensuring non-discrimination and gender equality in the field of labor relations**

The normative framework of the Republic of Moldova regarding ensuring equal opportunities between women and men in the field of labor relations clearly stipulates who are the public or private actors who have the ability to intervene in overcoming gender inequalities at work. Thus, according to law no. 121, of May 25, 2012 "On ensuring equality", Article 10, the subjects with powers in the field of preventing and combating discrimination and ensuring equality are:

- a) Council for preventing and eliminating discrimination and ensuring equality;
- b) Public authorities;
- c) Courts.

Civil society representatives can also intervene in combating gender inequalities: Trade unions within companies or branches and NGOs specialized in promoting equal opportunities between women and men. However, their intervention measures in overcoming gender inequalities and any forms of discrimination are primarily public opinion awareness, persuasion, advocacy, the effectiveness of which is not that great.

In this context, it is considered that the most appropriate institution to intervene in combating gender discrimination is the public institution State Labor Inspectorate (ISM). According to Law No. 140 of 10.05.2001 regarding the State Labor Inspectorate, it exercises state control over compliance with legislative acts and other normative acts in the field of work, safety and health at work, at enterprises, institutions and organizations, with any type of ownership and form legal organization for natural persons who employ employees, as well as in central and local public administration authorities. According to the law, the purpose of the State Labor Inspectorate is as follows:

- ensuring the application of the provisions of legislative acts and other normative acts regarding working conditions and the protection of employees in the exercise of their duties;
- disseminating information about the most effective means of complying with labor legislation, safety and health at work.

Based on these goals, ISM has the following attributions: a) controls compliance with labor legislation, safety and health at work; b) investigates, in the manner established by the Government, work accidents; c) offers, upon request, methodological assistance in the process of training, training and informing employers and employees, as well as other persons interested in the application of legislation in the field of labor relations, safety and health at work; d) grants, upon request, free consultation to employers and employees in the field of competence; e) exercise other duties provided by law. State control over compliance with normative acts in the field of work, safety and health at work consists of all the actions organized and carried out by the State Labor Inspectorate in the form of on-site verification, assessment and/or analysis and/or by direct request of to employers by mail, including electronic mail, or by telephone to present the



documentation and other information that they, by virtue of the law, are required to possess. In order to carry out their duties, ISM representatives visit companies subject to state control using the following checklists approved by the Ministry of Labor and Social Protection: Checklist in the field of labor relations; Occupational health and safety checklists; Checklist for the state control of the activity related to the employment abroad of the citizens of the Republic of Moldova.

The questions included in these checklists, in particular the Checklist in the field of labor relations, refer to labor legislation, primarily the Labor Code. It should be noted that among the questions in the checklist there is only one question related to combating gender discrimination and ensuring equal opportunities between women and men at work: "The employer ensures compliance with the principle of equal rights for all employees, compliance with the principle of dignity in work, equal opportunities and the elimination of any form of sexual harassment?" with the legal reference to the Labor Code art.1, art.5, art.8. At the same time, it should be mentioned that the checklists do not refer to other laws directly related to ensuring equal opportunities between women and men (Law no. 5 of 02.9.2006 "On ensuring equal opportunities between women and men" and Law No. 121 of 25.05.2012 "On ensuring equality").

### **Recommendation**

1. Ratification of ILO conventions no. 189 on decent work performed by domestic workers and 190 on violence and harassment at work, as well as associated recommendations and the insertion of their provisions into national legislation;
2. Drafting of Law no. 131 of June 8, 2012 "Regarding state control over the activity of an entrepreneur" in order to increase the efficiency of the State Labor Inspectorate's activity in overcoming deficiencies in the field of labor relations, including those related to combating any form of gender discrimination, harassment and workplace violence;
3. Adjustment of the legal framework regarding wages with clauses related to ensuring transparency, in order to ensure the principle of "equal pay for work of equal value".
4. Empowerment of the Council for the Prevention and Elimination of Discrimination and Ensuring Equality, the trade union organizations of the Ombudsman of local public authorities with real powers regarding the investigation of cases of gender inequality, discrimination, violence and harassment at work.
5. Development of instructions, regulations that provide for the conduct of the gender audit within the economic units.
6. Development of effective measures to combat sexual harassment in the workplace
7. The annual organization of training for State Labor Inspectorate workers in terms of combating the phenomenon of gender discrimination, sexual harassment, violence at work.
8. Streamlining the access mechanism for women in management positions in the economic sectors.

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