EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

REPORT
ON THE MEETING WITH THE ROMANIAN GOVERNMENT
WITHIN THE FRAMEWORK OF ARTICLE 22 PROCEDURE

(Bucharest, 18 - 19 May 2004)

Document prepared by the Secretariat

Situation of Romania on 1st May 2004

Ratifications

Romania ratified the Revised European Social Charter on 07/05/1999 and has accepted 65 of the Revised Charter's 98 paragraphs.

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3
6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1
8.2	8.3	8.4	8.5	9	10.1	10.2	10.3	10.4	10.5	11.1	11.2
11.3	12.1	12.2	12.3	12.4	13.1	13.2	13.3	13.4	14.1	14.2	15.1
15.2	15.3	16	17.1	17.2	18.1	18.2	18.3	18.4	19.1	19.2	19.3
19.4	19.5	19.6	19.7	19.8	19.9	19.10	19.11	19.12	20	21	22
23	24	25	26.1	26.2	27.1	27.2	27.3	28	29	30	31.1
31.2	31.3							= Accepted provisions			

Romania has not agreed to be bound by the "collective complaints" procedure.

Reports

Between 2001 and 2003, Romania submitted 3 reports on the Revised Charter.

Deadline for the submission of the 4th report on part of the non-hard core provisions of the Revised Charter: before 31/03/2004. Report received: 08/04/2004.

Deadline for the submission of the 5th report on hard core provisions of the Revised Charter: before 30/06/2005.

Position of the Revised Charter in the domestic order

Article 20 of the Constitution as revised in 2003: "1. Constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the convenants and other treaties Romania is a party to. 2. Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions."

The Constitutionnal Court has referred to the Revised Charter in 9 cases.

PROCEDURE PROVIDED BY ARTICLE 22 OF THE CHARTER

The Bucharest meeting was the second under the new procedure provided by Article 22 of the Social Charter – examination of non-accepted provisions - agreed by the Committee of Ministers in December 2002[1].

The Deputies had decided that "states having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and had "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned".

Following this decision, five years after ratification of the Revised Social Charter (and every five years thereafter), the European Committee of Social Rights would review non-accepted provisions with the countries concerned, with a view to securing a higher level of acceptance. Experience had shown that states tended to forget that selective acceptance of Charter provisions was meant to be a temporary phenomenon. The aim of the new procedure was therefore to require them to review the situation after five years and encourage them to accept more provisions.

In the case of Romania, the European Committee of Social Rights had agreed with the Romanian authorities that it would meet representatives of various ministries in Bucharest on 18 and 19 May 2004.

The delegation had comprised Mr Stein EVJU, General Rapporteur and former Chair of the Committee, Mr Tekin AKILLIOGLU and Mr Andrzej SWIATKOWSKI, representing the European Committee of Social Rights, and Mr Régis BRILLAT, Executive Secretary of the European Social Charter, and Ms Claire DUBOIS-HAMDI, administrator, representing the secretariat.

The meeting had been organised by Ms Cristina ZORLIN, Vice-Chair of the Governmental Committee of the European Social Charter and head of international relations at the Ministry of Labour and Social Protection.

[1] Committee of Ministers decision of 11 December 2002.

OUTCOMES OF THE MEETING

The meeting was opened by the Minister for Labour, Social Solidarity and the Family, Ms Elena DUMITRU. She said that the Revised Charter was a stepping stone towards an enlarged Europe. Ratification of the Revised Charter had helped and would continue to help her country to integrate into Europe in accordance with the requirements of the Community *acquis*. Her ministry had also firmly undertaken to extend Romania's commitments under the Revised Charter.

Mr Stein EVJU closed the meeting by noting that the considerable body of legislation passed since Romania's ratification of the Revised Charter – aimed particularly at bringing the law into line with Community standards – allowed the Romanian authorities to extend their commitments and accept more provisions. On the basis of the information received at the meeting, he had reached the following initial conclusions:

Provisions which could be accepted by Romania

Article 2§3 – The right to annual holiday with pay
Article 3§4 – The right to occupational health services
Article 15§3 – The right of persons with disabilities to social integration and participation
Article 19§5 – The right to equal treatment in respect of taxes and dues
Article 19§9 – The right of migrant to transfer their earnings and saving
Article 22 – The right of workers to participation in the determination and improvement of the working conditions
Article 26§1 – The right to dignity at work (prohibition of sexual harassment)
Article 27§3 – The right of workers with family responsibilities to equal opportunities and equal treatment (prohibition of termination of employment)

Provisions which could not be accepted by Romania

Article 13§4 – The right to urgent social and medical assistance
Article 19§4 – The right to equality of treatment in respect of conditions of employment, housing and right to organise
Article 23 – The right of elderly to social protection

Provisions for which the information provided was not sufficient

Article 10§§1-5 – The right to education
Article 14 – The right to social services
Article 18§§1 and 2 – The right to simplification and liberalisation of formalities related to immigration
Article 19§§1-3 – The right of migrants (assistance and information on migration, assistance to facilitate the departure, journey and reception, co-operation between emigration and imigration services)

Article 19§6 – The right to family reunion
Article 19§10 – The right of self-employed migrant workers to protection and assistance
Article 19§§11 et 12 – The right of migrants to the teaching the national language of the receiving state and their mother tongue
Article 26§2 – The right to dignity at work (prohibition of psychological harassment)
Article 27§1 – The right of workers with family responsibilities to equal opportunities and equal treatment (access to employment, occupational reintegration, vocational guidance and training, conditions of employment and social security, child day care)
Article 30 – The right to protection against poverty and social exclusion
Article 31§§1-3 – The right to housing

A survey of the ECSR case-law and the situation in Romania provision by provision is appended.

APPENDIX

SURVEY PROVISION BY PROVISION

Appendix has been drafted on the basis of the European Committee of Social Rights Case-Law Digest, May 2004 (document prepared by the Secretariat), the Collection of the relevant Romanian legislation (document prepared by the Ministry of Labour and Social Protection of Romania). It also takes into account the additional information provided during the meeting.

■ Article 2§3 (Right to annual holiday with pay)

Article 2
All workers have the right to just conditions of work

> 3. With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake provide for a minimum of four weeks annual holiday with pay.

ECSR Case-law presented by Mr A. SWIATKOWSKI

This provision guarantees the right to a minimum of four weeks' annual holiday with pay.

Annual leave may not be replaced by financial compensation, and employees must not have the option of giving up their annual leave.

Workers may be required to have been employed for twelve months before they become eligible for annual paid leave.

Workers who suffer illness or injury during their annual leave are entitled, on production of a medical certificate, to take the days lost at another time, so that they receive the two–week annual holiday provided for in the Charter.

Article I applies to this provision: this means that the situation is considered to be in conformity when the right enshrined in Article 2§3 is enjoyed by at least 80% of workers. However:

1. any Act failing to satisfy the above criteria, and potentially applying to all workers, is – even if it affects less than 20% in practice – in breach of paragraph 1.

2. The application of Article I cannot give rise to a situation in which a large number of persons forming a specific category are deliberately excluded from the scope of a legal provision.

The Romanian situation

Private sector

Labour Code

Article 139§§1-2
The right to holiday with pay is guaranteed to all employees. The right to holiday cannot make the object of a cession, renunciation or limitation" the annual holiday with pay is guaranteed to all employees.

Article 140:
(1) The minimum length of the annual holiday is 20 working days.
(2) The actual length of the annual holiday is established in the applicable collective labour contract, is stipulated in the individual labour contract and is granted in proportion to the activity performed in one calendar year.
(4) the length of the paid annual leave for the employees with individual employment contract is given proportionally with the time effectively worked.

The collective employment contract at national level provides that the minimum length of the annual paid leave shall be of 21 working days.

Article 241 para. 1, d:
The collective agreements' clauses produce effects for all employees in the country, in case of the collective agreement at national level. Therefore, the provisions of the Single Collective Agreement at national level are applicable to all employees hired by employers in the country. Thus, there are no employees that are not applied the provisions stipulated in the Labour Code or in the Single Collective Agreement at national level.

The labour Act does not provide for a minimum period of activity after which employees can benefit from the paid annual leave. The measures which allow for derogation from the rules set by the labour legislation in what concerns the duration of the working day and working week do not influence the duartion of the annual paid leave.

Public sector

Government decision no. 250/1999 on the annual holiday with pay and other holidays of the employees in the public administration, in autonomous regis with a specific character, republished, with subsequent modifications and completions
Article 1§1 "Employees in public administration are entitled, during a calendar year, to a paid peave from 21 to 25 working days, in relation with their length in service".

Government decision no. 250/1992, republished, with subsequent modifications and completions
Article 4: "the length in service that will be taken into consideration when determining the period of paid leave is the one that the employees will complete during the calendar year when the leave is granted. For the employees that get employed during a calendar year, the period of he paid leave shall be established proportionally with the period of time worked in that unit till the end of the respective calendar year, in relation with the length in service set up in the terms set by law."

Conclusion

This provision could be accepted by Romania.

■ Article 3§4 (Right to safe and healthy working conditions: occupational health services)

Article 3
All workers have the right to safe and healthy working conditions

> 4. With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.

ECSR Case-law presented by Mrs C. DUBOIS-HAMDI

According to Article 3§4, workers in all branches of the economy and every undertaking must have access to occupational health services. These services may be run jointly by several undertakings. If occupational health services are not established by every undertaking the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose.

The Romanian situation

Private et public sectors

In Romania, the national legislation in the field of health and safety at work provides for the requirement of setting up health and safety services in all companies and in all sectors.

Order of the Minister of Labour and Social Solidarity and of the Minister of Health and Family No. 508/933/2000 on the approval of the General Norms of Labour Protection, Section 3 (The medical structures of the labour medicine organization):

Article 32. The employers from the public, private and the cooperatist domains, including those with foreign capital, must ensure the supervision of the health situation of all employees through medical services of labour medicine.

Article 33 (1) The medical structures of labour medicine are functioning according to the regulations of the Ministry of Health, their activity having a prevalent preventive character.
(2) The medical structures of the labour medicine have the following attributions:
a) take part in the risk evaluations concerning the occupational diseases.
b) monitorise the health situation of the employees through:
- medical exams at employment in work.
- medical exam of accomodation;
- periodical medical control;
- medical exam for resuming the activity:
c) conduct the professional rehabilitation activity, the professional reconversion, the vocational reorientation in the case of work accidents, occupational diseases or other chronical affections;
d) communicate the existence of risks of occupational diseases to all the factors involved in the working process.
e) advise the employer on the adaptation of work and place of work to the psycho-physiological characteristics of the employees;
f) advise the employer on the fundamentation of the health and safety at work strategy;
g) participate at the national informatic system on work accidents and the occupational diseases.

Private sector

Labour Code Title V, Health and Safety at Work:

Article 174 (3) In the elaboration of the security and health in labour measures the employer is to consult with the syndicate or, if in case, with the employees representative, as well as with the security and health in labour committee.
Article 182.-The employers have the obligation to ensure the access of the employees at the medical service of the labour medicine.
Article 183 (1)The medical service of the labour medicine may be an autonomous service organised by the employer or a service ensured by an employers 'association .

Conclusion

This provision could be accepted by Romania.

■ Article 10§1 (Right to education, initial training and higher education)

Article 10
Everyone has the right to appropriate facilities for vocational training

> 1. With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;

ECSR Case-law presented by Mr R. BRILLAT

In view of the current evolution of national systems, which consists in the blurring of the boundaries between education and training at all levels within the dimension of lifelong learning, the notion of vocational training of Article 10§1 covers: initial training - i.e. general and vocational secondary education - university and non-university higher education, and vocational training organised by other public or private actors, including continuing training – which is dealt under paragraph 3 of the Charter (see below). University and non-university higher education are considered to be vocational training as far as they provide students with the knowledge and skills necessary to exercise a profession.

The right to vocational training must be guaranteed to everyone. States must provide vocational training by:

- ensuring general and vocational secondary education, university and non-university higher education; and other forms of vocational training;
- building bridges between secondary vocational education and university and non-university higher education;
- introducing mechanisms for the recognition/validation of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general, technical and university higher education;
- taking measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market;
- introducing mechanisms for the recognition of qualifications awarded by continuing vocational education and training.

Facilities other than financial assistance to students (which is dealt with under paragraph 4, see below) shall be granted to ease access to technical or university higher education based solely on individual aptitude. This obligation can be achieved by:

- avoiding that registration fees or other educational costs create financial obstacles for some candidates;
- setting up educational structures which facilitate the recognition of knowledge and experience, as well as the possibility of transferring from one type or level of education to another.

The main indicators of compliance include the existence of the education and training system, its total capacity (in particular, the ratio between training places and candidates), the total spending on education and training as a percentage of the GDP; the completion rate of young people enrolled in vocational training courses and of students enrolled in higher education; the employment rate of people who hold a higher-education qualification and the waiting-time for these people to get a first qualified job.

Equal treatment with respect to access to vocational training must be guaranteed to non-nationals. According to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training. To this purpose length of residence requirements or employment requirements and/or the application of the reciprocity clause are contrary to the provisions of the Charter.

Training of persons with disabilities is dealt with under Article 15 of the Charter for countries having accepted both provisions.

The Romanian situation

Organic Act of education (Act no. 84/1995 on education, re-published, modified and completed)

Article 5 (1) Romanian citizens have equal rights for access to education, irrespective of their social or ethnic origin, sex or religious affiliation. In Romania, the right to education is the basic principle of educational policies.

Act no. 145/1998 on the setting up, organization and functioning of the National Agency for Employment

This institution has the following attributions in the field of vocational training:
- Delivers and finances, according to the law, vocational training services, in accordance with the employment policies and with the labour market trends, with a view to facilitating employment;
- Submits to the Ministry of Labour, Social Solidarity and Family drafts laws in the field of employment and vocational training, as well as in the field of the unemployed social protection;
- Elaborates studies and analyses in the field of employment and vocational training, which will be used by the Ministry of Labour, Social Solidarity and Family in order to establish the strategies in the respective field;
- Provides the implementation of measures stipulated by the law, with a view to increasing the employment opportunities of jobseekers;
- Implements the measures aiming to stimulate employers in order to hire the unemployed.

Government Ordinance no. 129/2000 on the adults' vocational training:

Article 2 (1) Adults have equal rights to access to vocational training, without discrimination on grounds of age, sex, race, ethnic origin, political or religious affiliation;
(2) Trade companies, national companies, autonomous regies and other units under the authority of central and local public administration, units and institutions financed from budgetary and extra-budgetary funds hereinafter named *employers* shall take all measures to ensure the employees proper conditions for access to vocational training. The rights and obligations incumbing to employers and employees for the period when the employees participate in vocational training programmes shall be mentioned in the collective agreement or, as the case may be, in the individual employment contract.
(3) Jobseekers may participate, in the terms set by law, to the training programmes organized by the National Agency for Employment or other vocational training providers authorised in the terms set by law.

Article 3 – Vocational training for adults has the following main objectives:

a) facilitate social insertion of people in acordance with their vocational aspirations and the demand on the labour market;
b) train human resources capable to contribute to increased competitivity of the labour force;
c) update knowledge and improve vocational training in the basic ocupation, as well as in kindred ocupations;
d) change qualifications, as a result of economic re-structuring, social mobility or changes in labour capacity;
e) acquire advanced knowledge, modern methods and procedures required in the fulfillment of job tasks.

Article 4 (1) – Vocational training of adults includes initial vocational training and contiunous vocational training, organized by other forms than those specific to the national educational system.
(2) – Initial vocational training of adults ensures the necessary training for acquiring the minimum necessary vocational competences with a view to obtaining a job;
(3) – Continuous vocational training subsequent to initial training and ensures to the adults either already acquired vocational competencies or the acquirement of new competences.

Article 8 (3) – The National Agency for Employment has the following prerogatives in the field of employment:
a) coordinate at national level the activity of vocational training for job-seekers, according to the law, implements qualification and re-qualification policies and strategies for job-seekers;
b) organizes vocational training programmes for these categories of adults through its own centers, private centers or authorised vocational training providers;
c) assigns vocational training programmes through direct entrustment, through selection of offers or bidding, in the terms set by law.

Article 9 – With a view to achieving vocational training for their own employees, employers shall consult trade unions or, as the case may be, the employees' representatives with a view to elaborate vocational training plans, in accordance with the development programmes and the territorial and sectoral strategies.

Article 10 – Vocational training for adults is achieved through vocational training programmes containing all activities of theoretical and/ or practical training, with a view to achieving the objective of acquiring competences in a certain field of activity.

Article 11 (1) – Vocational training programmes are organized by vocational training providers for jobs, professions, specialties, occupations, hereinafter named *occupations*, included in the Clasification of Occupations in Romania (C.O.R.), as well as for the vocational competences common to more occupations.

Article 14 (3) – Vocational training providers who organizes programmes also for people with special needs shall adjust their programmes accordingly, for the purpose of ensuring equal and non-discriminatory access of these categories of people to vocational training.

Article 19 (1) – The authorization of vocational training providers shall be coordinated by the National Council for Vocational Training of Adults.

Article 25 – The National Council for Vocational Training of Adults has the following attributions in the authorization of vocational training providers:
a) guides methodologically, coordinates and controls the activity of authorizing committees and their technical secretariats;
b) approves vocational training framework-programmes defined according to Article 4, based on which vocational training providers elaborate the vocational training programmes provided at Article 10;

c) elaborates, in cooperation with the Ministry of Labour, Social Solidarity and Family and the Ministry of Education and Research, the assessment criteria and procedures of vocational training providers, with a view to authorise or withdraw the authorization, as well as the methodology of certifying the adults' vocational training;
d) solves out the contests submitted by the vocational training providers with regard to the authorising committees activity;
e) monitors the vocational training providers.

Act No. 76/2002 on the unemployment insurance system and employment stimulation

Article 57: better employment opportunities for jobseekers are achieved through a series of active measures (career counseling, job-matching, vocational training, counseling and assistance for starting up an independent activity etc.), among which the career counseling activity is essential as the first active measure provided to jobseekers. The counseling activity achieves the first contact with the customer so that the relation established with this one from the very beginning will influence his behaviour when approaching the labour market.

Article 4: the provisions of the Act shall be implemented without any discrimination on grounds of political affiliation, race, nationality, ethnic origin, language, religious affiliation, social category, beliefs, gender and age.

Jobseekers are entitled to receive free of charge vocational training services if they:
- do not have a job, do not earn an income or the income earned from activities authorized according by Act is lower than the unemployment benefit they would be entitled to, according to the law;
- are registered with the National Agency for Employment or with another employment service provider that operates according to the law;
- were not able to take up employment after graduating from an educational institution or after completing their compulsory military service;
- are foreign or stateless citizens who were employed or earned an income in Romania, according to the law;
- have not been able to take-up employment following repatriation or release from prison.

According to the amendments to the Act no. 76/2002, vocational training shalll be also provided free of charge to persons who carry out activities in rural areas and do not earn any income or earn monthly incomes lower than the unemployment benefit and who are registered with the employment agencies.

Upon the employer`s agreement or request, the vocational training will be also provided free of charge to the persons who are in one of the following situations:
- have resumed their activity at the end of the paid leave for child care until this one reaches the age of 2 years old, or 3 years old in case of a disabled child;
- have resumed their activity after completing the compulsory military service;
- have resumed their activity in case of recovery of working capacity after retirement for disability reasons.

Regulation on the organization and functioning of the National Agency for Civil Servants, approved by Governmental Decision no. 624/2003

Article 1 para. 1 item. 1 letters l) to o): the Agency has the following responsibilities:
- supports public administration authorities on carrying out activities for improving civil servants' vocational training by participating in training programmes in the field of civil service and of civil servants, participating in training programmes with a view to implement correctly and unitary the legislation on civil service and civil servants;
- cooperates with the National Institute for Administration and with the regional vocational training centers; supports these institutions with teaching personnel;

- centralizes the proposals for training of civil servants, set up following the assessment of their vocational performances;
- cooperates with the National Institute for Administration at the setting up of specific vocational training programmes in public administration.

Following an assessment made by the National Institute for Administration, the cost with the vocational training of civil servants under the Statute of civil servants is about 38.5 mil Euro per year.

Act no. 188/1999 on the civil servants status

Article 48 para. 1: All civil servants are obliged to attend vocational training programmes organized by the National Institute for Administration or other institutes authorised in the terms set by law, for an aggregated period of at least 7 days in a year.

Article 31 para. 1: All civil servants are entitled to continuously improve their vocational training. Moreover, the same Act provides for the compulsoriness of all civil servants to attend vocational training courses".

Conclusion

The information provided was not sufficient to determine whether or not this provision could be accepted.

■ Article 10§2 (Right to education, apprenticeship)

Article 10
Everyone has the right to appropriate facilities for vocational training

> 2. With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;

ECSR Case-law presented by Mr R. BRILLAT

According to Article 10§2, young people have the right to access to apprenticeship and other training arrangements. These types of training must combine theoretical and practical training, and close ties must be maintained between training establishments and the working world.

Apprenticeship is assessed on the basis of the following elements: length of the apprenticeship and division of time between practical and theoretical learning; selection of apprentices; selection and training of trainers; remuneration of apprentices; termination of the apprenticeship contract.

The main indicators of compliance are the existence of apprenticeship and other training arrangements for young people, the number of people in, and the total spending for these types of training, the availability of places for all those seeking them.

Equal treatment with respect to access to apprenticeship and other training arrangements must be guaranteed to non-nationals on the basis of the conditions mentioned under paragraph 1.

The Romanian situation

Government Ordinance no. 129/2000, re-published, approved by the Act no. 375/2002 as well as the implementation methodological norms on adults education

Article 17 (1): Training can be achieved also through apprenticeship, organized at work places. Through this training, people over 15 years old who graduated secondary school and have or not a capacity certificate, can get a professional qualification.

Government Ordinance 522/2003 on the approval of the methodological rules for the implementation of the provisions of the G.O. 129/2000 on adult vocational training

Article 10: The organization and carrying out of the on-the-job apprenticeship, provided for in G.O.129/2000, will be regulated by a special law.

Labour Code, Chapter III, regulates the apprenticeship at work place, the apprenticeship agreement respectively. The Ministry of Labour, Social Solidarity and Family has exclusive responsibilities at work place and in attesting apprenticeship foremen.

Article 205:
(1) An on-the-job apprenticeship contract is a particular type of individual labour contract, based on which:
a) the employer, as a legal or natural entity, shall undertake to provide the apprentice with vocational training in a certain trade, besides the payment of wages;
b) the apprentice undertakes to attend the vocational training courses and to work as a subordinate of that employer.

(2) The on-the-job apprenticeship contract shall be concluded for a definite term, which cannot exceed 3 years.
Article 206:
The employer licensed by the Ministry of Labour and Social Solidarity shall conclude the on-the-job apprenticeship contract.
Article 207
(1) There can be employed as an apprentice any young person who holds no professional qualification and who, by the beginning of the apprenticeship period, has not turned 25 years of age.
(2) An apprentice shall benefit from the provisions applicable to the other employees unless they are contrary to those typical of the apprentice's status.
Article 208
The time needed by the apprentice to participate in theoretical activities related to his/her vocational training shall be included in the normal work schedule.
Article 212
(1) The apprentice's abilities of performing the trade for which he is being trained through the on-the-job apprenticeship contract shall make the object of a final check by the employer.
(2) The employees whose vocational training has made the object of an on-the-job apprenticeship contract shall not be obliged to cover the training expenses incurred by the employer.
Article 213
The control of the on-the-job apprenticeship activity, the apprentice's status, the conclusion and execution of the on-the-job apprenticeship contract, the licensing of employers for concluding on-the-job apprenticeship contracts, the certification of the apprenticeship foreman, the final check of the apprentice's abilities, as well as any other aspects related to the on-the-job apprenticeship contract shall be regulated by a special law.

Conclusion

The information provided was not sufficient to determine whether or not this provision could be accepted.

■ Article 10§§3 et 4 (Right to education, continuing education and reintegration – special reintegration measures for long term unemployed)

Article 10
Everyone has the right to appropriate facilities for vocational training

3. With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to provide or promote, as necessary:

a adequate and readily available training facilities for adult workers;

b special facilities for the re–training of adult workers needed as a result of technological development or new trends in employment;

4. With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed;

ECSR Case-law presented by Mr R. BRILLAT

Article 10§3

The right to continuing vocational training must be guarantee to employed and unemployed people. Article 10§3 takes into consideration only those of the activation measures for unemployed people that strictly concern training, while Article 1§1 deals with general activation measures for unemployed people. Specific measures for long-term unemployed people are dealt with under Article 10§4. The notion of continuing vocational training includes adult education.

For both employed and unemployed persons, the main indicators of compliance with this provision are the types of continuing vocational training and education available on the labour market, training measures for certain groups, such as women, the number of persons in training and the gender balance, and the total expenditure as a percentage of the GDP.

As regards employed people, the existence of preventive measures against the deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic progress is also taken into consideration. Self-employed people are covered.

As regards unemployed people, the activation rate – i.e. the ratio between the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures- is considered to assess the impact of the States' policies. In addition, the following aspects are taken into account:

- the existence of legislation on individual leave for training and its characteristics, in particular the length, the remuneration, and the initiative to take it;
- the sharing of the burden of the cost of vocational training among public bodies (state or other collective bodies), unemployment insurance systems, enterprises, and households as regards continuing training.

Equal treatment with respect to access to continuing vocational training must be guaranteed to non-nationals on the basis of the conditions mentioned under paragraph 1.

Article 10§4

In accordance with Article 10§4, States must fight long-term unemployment through retraining and reintegration measures. Long-term unemployed is a person who is since 12 months or more without work.

The main indicators of compliance with this provision are the types of training and retraining measures available on the labour market, the number of persons in this type of training, with special attention to young long-term unemployed, and their impact on reducing long-term unemployment.

Equal treatment with respect to access to training and retraining for long-term unemployed persons must be guaranteed to non-nationals on the basis of the conditions mentioned under paragraph 1.

The Romanian situation

In addition to the information provided under Article 10§1:

The National Agency for Employment works out annually the National Vocational Training Plan, which addresses all jobseekers, taking into account the changes likely to appear on the labour market at local and national level. Through its own vocational training centres and the 6 regional adult training centres, the National Agency for Employment provides vocational training services to jobseekers, as well as to employers willing to train their own staff, and to interested natural persons.

According to the legislation in force, the vocational training is provided free of charge both to the unemployed entitled and to those not entitled to unemployment benefit, who are registered with the employment agencies.

Act no. 76/2002 on the unemployment insurance system and stimulation of employment, modified by the Governmental Decision no. 107/2004

Article 63 (1) The jobseekers can participate in vocational training programmes meant to increase and diversify their skills with a view to ensuring their mobility and reintegration into the labour market.
(2) The vocational training programmes will ensure, according to the law, the initiation, training, retraining, upgrading and specialisation of the jobseekers.
(3) The vocational training of the jobseekers is made according to the current and future needs of the labour market and in accordance with the individual options and aptitudes of the persons concerned.
(4) The types of vocational training for the jobseekers are the following: courses, practical and specialised stages as well as other types, according to the law.

Article 64 (1) The access to the vocational training programmes is provided as a result of the professional information, counselling or labour exchange activity.
(2) The vocational training programmes of the jobseekers are organised on different levels of skills and specialisation as well as for categories and groups of persons.

Article 65 (1) The vocational training of the jobseekers is made according to the National Plan for Vocational Training worked-out by the National Agency for Employment every year.

(2) The National Plan for Vocational Training is approved by the Ministry of Labour and Social Solidarity.
(3) The vocational training activity is funded from the Unemployment Insurance Fund, based upon the indicators established by the approved National Plan for Vocational Training.

Article 67 (1) ... as well as the persons who carry out activities in the rural areas and do not earn monthly incomes or earn monthly incomes less than the unemployment benefit and are registered at the employment services, benefit from free vocational training services;
(2) Vocational training services are ensured freely at the request of the employees, with the employer's consent, or the employer's request, for the following categories of persons:
a) who resumed the activity after the ending of the paid leave for child care untl this ine reaches 2 or 3 years old in case of a disabled child;
b) resumed activity after the completion of the compulsory military service;
c) resumed activity following the recovery of work capacity after retirement for invalidity;

Article 68 (1) (5) Persons benefiting from unemployment benefits are obliged to participate in vocational training centers provided and organized by the employment services.
(6) The persons mentioned in Article 66 para. 1 may benefit from vocational training services only once each time when they are job-seekers.

Labour Code:

Article 39:
(1) The employee's main rights are as follows:
g) the right of access to vocational training;
Article 40:
(2) The employer's main obligations are as follows:
c) to grant the employees all the rights deriving from the law, the applicable collective labour contract, and the individual labour contracts;
Article 149
(1) The employees shall be entitled to benefit, on request, from vocational training leaves.
(2) Vocational training leaves can be paid or unpaid.
Article 150
(1) The unpaid vocational training leaves shall be granted, at the employee's request, for the duration of the vocational training the employee is attending on his/her initiative.
(2) The employer can only reject the employee's request based on the consent of the trade union or, as the case may be, of the employees' representatives and only if the employee's absence would cause serious harm to the activity.
Article 151
(1) The application for vocational training unpaid leave shall be submitted to the employer at least one month before its commencement and it shall state the date of commencement of the vocational training term and its duration, as well as the denomination of the vocational training institution.
(2) The vocational training unpaid leave can also be taken in fractions in the course of one calendar year, with a view to taking the examinations for graduating some education institutions or taking examinations for passing in the next year of higher education institutions, in compliance with the terms stipulated under paragraph (1).
Article 152
(1) If, during one calendar year - for employees aged up to 25 years - and two consecutive calendar years - for employees aged over 25 years -, respectively, the participation in vocational training has not been provided at the employer's expense, the employee in question shall be entitled to a vocational training leave, paid by the employer, of up to 10 working days.
(2) In the instance stipulated under paragraph (1), the leave allowance shall be established according to Article 145.
(3) The period during which an employee benefits from the paid leave stipulated under paragraph (1) shall be mutually agreed upon with the employer. The application for vocational

training paid leave shall be submitted to the employer under the terms stipulated under Article 151 (1).

Article 153

The length of the vocational training leave shall not be deducted from the length of the annual holiday, and shall be considered an actual work period as regards the entitlements due to the employee other than the wages.

Article 189

The employees' vocational training shall be achieved through the following forms:

a) participation in courses organised by the employer or by the providers of vocational training services in Romania or abroad;

b) periods of vocational adjustment to the requirements of the position or work place;

c) periods of practice and specialisation in Romania and abroad;

d) on-the-job apprenticeship;

e) individual training;

f) other training forms agreed upon by the employer and the employee.

Article 190

The employer shall provide the employees with periodical access to vocational training.

Article 191

(1) The employer who is a legal entity shall prepare annual vocational training plans, after consulting the trade union or, as the case may be, the employees' representatives.

(2) The vocational training plan shall be an integral part of the applicable collective labour contract.

(3) The employees shall have the right to be informed about the contents of the vocational training plan.

Article 192

The individual vocational training shall be set up by the employer together with the employee in question, taking into consideration the criteria considered for the annual vocational training plan and the conditions of activity at the work place.

CHAPTER II

Special contracts for vocational training organised by the employer

Article 198

Special contracts for vocational training are deemed the professional qualification contract and the vocational adjustment contract.

Article 199

(1) A professional qualification contract is a contract based on which an employee undertakes to attend the training courses organised by the employer with a view to acquiring professional qualifications.

(2) Professional qualification contracts can be concluded by employees over 16 years old, who have not acquired a qualification or have acquired a qualification which does not allow them to keep their job with that employer.

(3) A professional qualification contract shall be concluded for a period of 6 months to 2 years.

Article 200

(1) Professional qualification contracts can only be concluded by employers licensed to this effect by the Ministry of Labour and Social Solidarity and the Ministry of Education and Research.

(2) The licensing procedure, as well as the certification of the professional qualification shall be stipulated in a special law.

Article 201

(1) A vocational adjustment contract shall be concluded in view of the beginners' adjustment to a new position, a new work place, or a new team.

(2) A vocational adjustment contract shall be concluded at the same time as the individual labour contract or, as the case may be, when the employee commences work in the new position, the new work place, or the new team, according to the law.

Article 202

(1) The vocational adjustment contract is a contract concluded for a definite term, which shall not exceed one year.

(2) On the expiry of the vocational adjustment contract time limit, the employee can be subject to an assessment with a view to seeing to what extent he/she can cope with the new position, new work place, or new team where he/she is to work.

Article 203

(1) A trainer shall carry out the vocational training at the employer's level by means of special contracts.

(2) The trainer shall be appointed by the employer from amongst the qualified employees, with a vocational experience of at least 2 years in the field in which the vocational training is to take place.

(3) A trainer can provide training, at the same time, to 3 employees at the most.

(4) The exercise of the vocational training activity shall be included in the trainer's normal work schedule.

Article 204

(1) The trainer must receive, help, inform, and guide the employee throughout the duration of the special vocational training contract, and supervise the compliance with the job duties corresponding to the position of the trainee.

(2) The trainer shall facilitate the co-operation with other training bodies, and participate in the assessment of the employee having benefited from vocational training.

Conclusion

The information provided was not sufficient to determine whether or not these provisions could be accepted.

■ Article 10§5 (Right to education, measures to facilitate the accessibility)

ECSR Case-law presented by Mr R. BRILLAT

5. With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to encourage the full utilisation of the facilities provided by appropriate measures such as:

a reducing or abolishing any fees or charges;

States must ensure that vocational training, as defined in paragraph 1, is provided free of charge or that fees are reduced.

b granting financial assistance in appropriate cases;

All issues concerning financial assistance for vocational training up to higher education, including allowances for training programmes in the context of the labour market policy, are treated under paragraph 4. States must provide financial assistance either universally, or subject to a means-test, or awarded on the basis of the merit. At any event, it shall be at least available for those in need and it shall be adequate. It may consist of scholarships or loans at preferential interest rates. The number of beneficiaries and the amount of financial assistance are also taken into consideration for assessing compliance with this provision.

Equal treatment with respect to fees and contributions, and financial assistance must be guaranteed to non-nationals on the basis of the conditions mentioned under paragraph 1.

c including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;

The time spent on supplementary training at the request of the employer must be included in the normal working-hours. Supplementary training means any kind of training that may be helpful in connection with the current occupation of the workers and aiming at increasing their skills. It does not imply any previous training. The term “during employment” means that the worker shall be currently under a working relationship with the employer requiring the training.

d ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.

States must proceed to the evaluation of their vocational training programmes for young workers, including apprenticeship. In particular, it is required the participation of employers’ and workers’ organisation in the supervision process.

The Romanian situation

In addition to the information provided under Article 10 §§1 to 4 :

Act No. 375/2000

Article 42 specifies that the authorized training providers are exempted from VAT payment for the vocational training activities.

Act no. 76/2002 on the unemployment insurance system and employment stimulation

In order to prevent unemployment and strengthen employment by way of increasing and diversifying the professional skills of the employed persons, the employers who organize, on the basis of the vocational training plan, vocational training programs for their own staff, carried out by training providers authorized according to the law, will receive, out of the Unemployment Insurance Budget, an amount representing 50% of the expenses with vocational training services for a number of at most 20% of the employed staff.

The National Agency for Employment is managed by a Board made of 15 members.
Vocational training courses are subsidized in the limit of funds provided for in the Act on state budget or may be financed from external funds.

Labour Code

Article 194
(1) If the participation in vocational training courses or periods is initiated by the employer, all the expenses incurred for that participation shall be covered by him.
(2) If, under the terms stipulated under paragraph (1), the participation in vocational training courses or periods involves a partial interruption of activity, the participating employee shall benefit from wage entitlements as follows:
a) if the participation involves the interruption of the employee's activity for a period not exceeding 25% of the normal length of the working day, he/she shall benefit, for the entire duration of the vocational training, from the full wages corresponding to his/her position and office, with all allowances, benefits and additions to them;
b) if the participation involves the interruption of the employee's activity for a period exceeding 25% of the normal length of the working day, he/she shall benefit from the basic wages and, as the case may be, the seniority bonus.
(3) If the participation in vocational training courses or periods involves a full interruption of activity, the individual labour contract of that employee shall be suspended, and he/she shall benefit from an allowance paid by the employer, as stipulated in the applicable collective labour contract or in the individual labour contract, as the case may be.
(4) For the period of individual labour contract suspension according to the provisions stipulated under paragraph (3), the employee shall benefit from seniority in that job, that period being considered as a period of contribution to the system of social state insurance.

Article 195
(1) The employees who have benefited from a vocational training course or period exceeding 60 days under the terms of Article 194 (2) b) and (3) shall not be allowed to request the termination of the individual labour contract for a period of at least 3 years from the date of graduation of the vocational training courses or period.
(2) The duration of the employee's obligation to work for the employer who covered the expenses incurred for the vocational training, as well as any other aspects related to the employee's obligations, subsequent to the vocational training, shall be set up in a rider to the individual labour contract.

(3) The failure by the employee to comply with the provision stipulated under paragraph (1) shall cause him/her to cover all the expenses incurred for his/her vocational training, in proportion to the period not worked from the period established according to the rider to the individual labour contract.

(4) The obligation stipulated under paragraph (3) shall also apply to employees who have been dismissed during the period established in the rider, for disciplinary reasons, or whose individual labour contract has ceased due to them being taken into preventive custody for a period exceeding 60 days, being sentenced by means of a judgment, which was final, for an offence related to their job, as well as if a criminal court has placed on him/her a temporary or permanent interdiction to exercise his/her profession.

Article 196

(1) If the employee has the initiative of participating in an off-the-job vocational training form, the employer shall review the employee's request together with the trade union or, as the case may be, the employees' representatives.

(2) The employer shall decide on the request filed by the employee according to paragraph (1) within 15 days from the receipt of the request. At the same time, the employer shall decide on the terms under which he will allow the employee to participate in the vocational training form, including whether he will cover the cost of this entirely or partially.

Article 197

The employees who have concluded a rider to the individual labour contract in connection with vocational training can receive, apart from the wages corresponding to their job, other advantages in kind for vocational training.

Act no. 188/1999 on the public servants status

In the public administration system, training courses are included in the normal working programme. According to Article 31 para. 3 of the Act no. 188/1999 with the subsequent modifications and completions, when the vocational training, in the forms stipulated by law, are organized outside the locality where the authority or public institution has its headquarters, civil servants benefit from *the right to delegation*, in the terms set by law.

Act no. 571/2003 on Tax Code

There were provided tax incentives concerning the diminishing of duties and taxes applied in what concerns the professional training, as follows:

I) The individuals

There are non-taxable incomes, inter alia:

-the amounts or goods received like sponsorship or mecenat;

-the scholarships received by individuals who attend any form of education or training in an institutionalized form;

-the amounts or gods received with title of donations.

The income derived from independent activities in the case of taxpayers who make the option for the computation of the net income on real basis are also allowed as deductible expenses:

- the expenses which represent mandatory professional contributions dues, according to the law, to the professional associations from which the taxpayers are part of;
- the expenses with the professional training for the taxpayers and their employees;
- the expenses with sponsorship and mecenat in the limitations and conditions provided by law.

In case of salaries derived from the main job there are deductible professional expenses amounting to 15% of the basic monthly deduction, together with the basic deduction. Moreover, there are not included in the salary the expenses made by the employer for professional training and improvement of the employees' performances, in connection with the activity carried out by the employer.

The individual taxpayers may also decide on the destination of an amount representing up to 1% from the annual income tax due for the sponsorship of non-profit entities. To the extent that these

entities have as an objective the encouragement of vocational training, they may use the respective amounts for the financing of that objective.
II) The legal persons
There are deductible expenses for the computation of the profit tax, inter alia, the following:
- expenses for the vocational training and improvement of the employees' performances as well as the expenses with the taxes;
- subscriptions to non-governmental organizations or professional organizations, equivalent of 2,000 Euro annually.

Conclusion

The information provided was not sufficient to determine whether or not this provision could be accepted.

■ Article 13§4 (The right to urgent social and medical assistance)

Article 13
Anyone without adequate resources has the right to social and medical assistance.

> 4. With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

ECSR Case-law presented by Mr A. SWIATKOWSKI

Article 13§4 applies to nationals of the other Parties who are lawfully present in a Party's territory, but do not reside lawfully or work regularly there. Since their presence is temporary, appropriate forms of social and medical assistance do not necessarily include all the benefits available under the general scheme. Temporary assistance in an emergency is sufficient (food, accommodation, clothing, emergency medical care). In such cases, assistance must be given, regardless of local or national resources.

Persons covered by this provision may be repatriated, but the relevant provisions of the 1953 European Convention on Social and Medical Assistance must be respected.

Situation in Romania

Order No. 44/2004 on the social integration of foreign nationals who have acquired a form of social protection in Romania.

Section 7 granted foreign nationals covered by the order, the right to medical assistance under the same conditions as Romanian nationals (for 72 hours). Under Section 8, foreign nationals were eligible for the national social assistance scheme, simply on request.

Act No. 296/2002 concerning medical assistance granted to foreign nationals in Romania on the basis of international arrangements, agreements and conventions on reciprocity in health matters to which Romania is a party.

Conclusion

This provision could not be accepted by Romania.

■ Article 14§§1-2 (Right to social services)

Article 14
Everyone has the right to benefit from social welfare services

1. With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;
2. With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

ECSR case-law presented by Mrs C. DUBOIS-HAMDI

The right to benefit from social welfare services provided for by Article 14§1 requires Parties to set up a network of social services to help people to overcome any problems of social adjustment, whatever the causes or effects of those problems may be – personal, family–related, occupational, physical or psychological.

This covers:

i. The provision of social welfare services for all groups likely to need them

Social welfare services within the meaning of Article 14 may focus on specific groups or be general. What counts is that groups which are naturally vulnerable – children, the elderly, people with disabilities, young people with problems, young offenders, minorities (migrants, gypsies, refugees, etc.), the homeless, alcohol and drug abusers, victims of domestic violence and former prisoners – should be able to avail of them in practice.

ii. Effective access to social welfare services

The right to these services must be guaranteed in practice; this implies that:

– people wishing to use them may do so as of right and can appeal against unfair refusals;
– any financial contributions required are in proportion to the applicant's income;
– geographical distribution of these services is sufficiently wide;
– recourse to these services does not interfere with people's private lives;

According to Article 14§2, States must undertake:

i. To provide support for voluntary associations seeking to establish social welfare services

Article 14 imposes no set model, and states may achieve this goal in different ways: they may promote the establishment of social services jointly run by public bodies, private concerns and voluntary associations, or may leave the provision of certain services entirely to the voluntary sector.

The "individuals and voluntary or other organisations" referred to in paragraph 2 include the voluntary sector, private individuals, trade unions, employers' organisations, private firms, etc.

The Committee looks at all forms of support, financial (grants or tax incentives) and non–financial. It also verifies that the Parties are continuing to ensure that services are accessible to all and are effective, in keeping with the above criteria. Specifically, Parties must ensure that public and private services are properly co–ordinated, and that efficiency does not suffer because of the number of providers involved.

ii. To encourage individuals and organisations to play a part in maintaining services

The Committee looks at action taken to strengthen dialogue with civil society in areas of welfare policy which affect the social welfare services. This includes action to promote representation of specific user–groups in bodies where the public authorities are also represented, and action to promote consultation of users on questions concerning organisation of the various social services and the aid they provide.

The Romanian situation

Article 14§1

Legislation in force:
- Ordinance no. 68/2003, Off. J. No. 619/august 30, 2003, regarding the social services
- Act 515/2003, Off. J. 861/2003, for Approval of Ordinance 68/2003
- Government Decision 412/2003 for approval of the Norms regarding the organization, functioning and financing of the social-medical assistance units, Off. J. 260/2003 revised by the Instructions 1 and 507/2003 for enforcing the norms regarding the organization and financing of the social-medical assistance units, as approved by the Government decision 412/2003
- Government decision 1610 /2003 regarding the approval of the Social program for 2003-2004, Objective 5, Off. J. 45/2004
- Government decision 829/2002 regarding the approval of the National Plan for Combating Poverty and to Promote Social Inclusion, Chapter 9, Objectives 1, 2, 3, 4, 5, 8, 10, 11, 12, 13, Off. J. 662/2002
- Order of the MH 727/2003 regarding the Prevention of the admittance of the endangered child into the placement centers and to alleviate the medical status of the children protected in the placement centers, Off. J. 689/2003
- Legea nr. 208/1997 privind cantinele de ajutor social
- Legea nr. 215/2001 Legea administratiei publice locale

The numerous texts on social services regulate the categories of beneficiaries, financing, monitoring, areas of competence, division of work between the different providers, minimum standards of quality, etc.

Article 14§2

- Government decision no. 97/1991 regarding the support of the activities of the persons, physical or juridical, and of the NGOs that develop in Romania humanitarian, medical and social activities, published in OJ no. 38/1991
- Government decision no. 121/1992 for completing Government decision no. 97/ 91 regarding the support of the activities of the persons, physical or juridical, and of the NGOs that develop in Romania humanitarian, medical and social activities, published in OJ no. 53/1992
- Government decision no. 637/1999 for modifying and completing Government decision no. 97/ 91 regarding the support of the activities of the persons, physical or juridical, and of the NGOs that develop in Romania humanitarian, medical and social activities, published in OJ no. 379/1999
- Legea nr.34/1998 privind acordarea unor subventii asociatiilor si fundatiilor române cu personalitate juridica, care înfiinteaza si administreaza unitati de asistenta sociala
- Ordonanta Guvernului nr. 26/2000 cu privire la asociatii si fundatii, modificata si completata prin Ordonanta Guvernului nr. 37/2003

Conclusion

The information provided was not sufficient to determine whether or not these provisions could be accepted.

■ Article 15§3 (The right to integration and participation of persons with disabilities in the life of the community)

Article 15
Disabled persons have the right to independence, social integration and participation in the life of the community.

> 3. With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.

ECSR Case-law presented by Mr S. EVJU

In order to enable persons with disabilities to exercise the right to social integration provided for by Article 15§3, barriers to communication and mobility must be removed in order to enable access to transport (land, rail sea and air), housing (public, social and private), cultural activities and leisure. In particular sign language must have an official status, telecommunications and new information technology must be accessible. All new public transport vehicles, all newly constructed or renovated public buildings, facilities and buildings open to the public should be physically accessible. The needs of persons with disabilities must be taken into account in housing policies; including the construction of an adequate supply of suitable housing including social housing. Further assistance should be available for the adaptation of existing housing.

This provision requires states to adopt a coherent policy in the disability context: positive action measures to achieve the goals of social integration and full participation of persons with disabilities.

Such measures should have a clear legal basis and be coordinated. People with disabilities themselves should have a voice in their design, implementation and review. Further there must be non-discrimination legislation (or similar) in relation to disability covering all areas mentioned in this paragraph as well as effective remedies for those who have been unlawfully treated.

The Romanian situation

The Act no. 519/2002 for the approval of Emergency Ordinance 102/1999 regarding special protection and employment of persons with handicap (OJ no.555/29.07.2002), within the articles 11-17 stipulates provisions regarding the accessibility of the buildings , houses built from public founds, common transports vehicles, public phones and the access ways, parking places and are stipulated the imperative terms for accessibility of these.

The Government Decision no. 1215/2002 for the approval of the National Strategy on the special protection and social integration of disabled people, at item 6 - Sectorial fiels, lit. D. Accessibilities, lays down provisions concerning the accessibility at the physical environment and accessibilities at the information , education , culture . Also, in the field of accessibilities, was recognized the sign language and the language specific for blind and deaf people by the elaboration of the Common Order no. 721/2002 of the minister of health and family and of the minister of the education and research for the approval of the regulations concerning the procedure and the conditions of authorizing of the interpreters for the sign language and for the language specific to the deaf and blind persons (OJ no 908/12/13/2002).

At the NAPH initiative, according to the provisions of the Common Order no.338/334/2003 of the Ministry of Labour, Social Solidarity and Family and of the National Institute of Statistics regarding the completion of the Occupations Classification in Romania, the occupations of personal assistant for the person with severe handicap and sign language interpreter (with high school or university graduation) were introduced in the Classification. NAPH in collaboration with the National Association of Deaf Persons from Romania has elaborated during 2003 the work paper "Manual of sign language".

For the field of the accessibilities, information, communication, NAPH in collaboration with the IT Research Institute has designed during the month of September 2002 an appropriate site for persons with handicap: http://www.anph.ro.

A Brochure drafted by NAPH was given to the members of the delegation during the meeting. That document provides detailed information on the National strategy for the special protection and social integration of disabled people in Romania.

Ordinance on preventing and sanctioning all forms of discriminations (as complete and modified by Act no. 48/2002) prohibits any form of discrimination in all areas mentioned in Article 15§3 of the Revised Charter. Although the ground of disability is not explicitely mentioned, according to the Romanian authorities this ground is covered by this text.

Conclusion

This provision could be accepted by Romania.

■ Article 18§§1 et 2 (Application des règlements en matière d'immigration dans un esprit libéral et Simplification des formalités d'immigration)

Article 18
The nationals of any one of the Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.

1. With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake to apply existing regulations in a spirit of liberality;
2. With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;

ECSR Case-law presented by Mr T. AKILLIOGLU

Article 18§1

Article 18 applies to employees and the self-employed who are nationals of Parties to the Charter. It also covers members of their family allowed into the country for the purposes of family reunion.

Article 18 covers not only workers already on the territory of the Party concerned, but also those in their country of origin.

This article also covers foreign workers who have obtained employment but subsequently lose it.

The Committee's assessment of the degree of liberality used in applying existing regulations is based on figures showing the refusal rates for work permits. To this end, the figures supplied must be broken down by country and must also distinguish between first-time applications and renewal applications.

Article 18§2

Formalities and dues and other charges are one of the aspects of regulations governing the employment of workers covered by paragraph 3 but are dealt with specifically in this provision.

With regard to the formalities to be completed, conformity with Article 18§2 presupposes the possibility of completing such formalities in the country of destination as well as in the country of origin and obtaining the residence and work permits at the same time and through a single application. It also implies that the documents required (residence/work permits) will be delivered in a reasonable time.

Chancery dues and other charges for the permits in question must not be excessive and, in any event, must not exceed the administrative cost incurred in issuing them.

The Romanian situation

Law no. 188/1999 on public servants status
Article 49 letter a): any person who has Romanian citizenship and resides in Romania may fill in a public position.

Labour Code
Article 36: Foreign and stateless citizens can be employed under an individual labour contract based on the work permit issued according to the law.

Law no. 203/1999 on work permits, with subsequent modifications and completions:
Article 2
The work permit may be issued, upon request, to foreigners which fulfill the conditions provided by the law in what concern employment and who have the employment visa applied on the documents for border passing.
Article 5
(1) The foreigners which are in one of the following situations, can be employed by natural or legal persons in Romania without a work permit:
a) have established their residence on the territory of Romania, according to the law;
b) have received the refugee status on the territory of Romania;
c) are employed by natural or legal persons having their residence, respectively their registered office, abroad and are sent by them to run temporary activities in Romania;
d) in other situations provided by conventions or agreements Romania is a party to or by special laws.

Government Decision 1225/2003 regarding the amendments of GD434/2000 approving the Methodological Norms regarding the procedure of issuing and cancelling of work permits (Official Gazette 763 / 30 October 2003)

Starting 30 October 2003 - the date of entering into force of the present Decision – work permits could be also issued based on a 'long-term visa for other purposes'. Moreover, work permits may be granted to foreigners who are not required to obtain a long-term visa for employment purposes prior to entry into Romania. A work permit would be provided to foreigners based on their long-term visa for family reunification or studies purposes, as well.

In addition, the Decision provides details on the new conditions to be fulfilled, as well as the documents to be submitted by a Romanian employer to the Labour Force Migration Office (Oficiul pentru Migratia Fortei de Munca – OMFM). The latter shall approve the request within 15 working days from the registration date. There are also stipulated new conditions and procedures to be followed in case of extension, cancellation and renewal of existent work permits. The Decision also abrogates the previous provision according to which no work permit had been required for foreigners performing temporary teaching, scientific, artistic and any other specific activities for a period up to 30 days.

Due to the current amendments, no special simplified procedure would be further available for citizens of the Republic of Moldova. Moreover, within 10 days from issuing the work permit, the employment agreement between parties will be concluded for a determined period, in accordance with the work permit validity. The current amendments also forbid the foreigner to apply at the same time for more work permits with different employers.

Law no. 507/2002 on organisation and performance of economic activities by individuals (Official Gazette no. 582 dated 6 August 2002).

The Law sets forth the conditions under which individuals – Romanian citizens or citizens of the EU member states and the member states of the European Economic Area – can perform economic activities in Romania, either independently, or as family associations. The Law does not apply to individuals performing their activity under a special law (exempli gratia: lawyers, notaries public, etc);

In order to carry out economic activities, the individuals who act independently as well as the family associations must obtain an authorisation. Performing the activity without the relevant authorisation is deemed as a crime and is sanctioned according to the criminal law. Moreover, in case the performance of a specific economic activity requires a specific authorization, such authorization must be also obtained;

The authorization is issued, upon request, by the mayor of villages, towns, etc, where the individuals have their residence. The application will be sustained with various documents, such as police record, medical certificate, documents attesting the professional skills as well as the permits and authorizations and/or the specific authorization, in case they are necessary. The legal deadline for issuing the authorization is 15 working days from the filing date of the application;

Individuals and family associations are entitled to only one authorization and they can only perform the activities approved under the authorization. The authorization can be extended to cover other activities, following the procedure provided by the Law in this respect;

Once the authorization has been obtained, individuals and family associations must register themselves with the Trade Registry and the relevant tax authorities;

Individuals performing economic activities independently and family associations, authorized according to the Law, may not employ personnel under individual labor agreements;

Government Decree no. 58/ 2003 on the approval of the Methodological Norms implementing the Law no. 507/2002 on natural persons setting-up and developing economic activities (Official Gazette of Romania no. 108/20 February, 2003), as amended and completed subsequently by:

- Emergency Government Ordinance no. 119/4 November 2003 on the prorogation of the term stipulated in art. 17 alin. (1) of the Law no. 507/2002 on natural persons setting-up and developing economic activities (Official Gazette of Romania no. 777/5 November, 2003).

- Government Decree no. 1428/4 December 2003 amending and completing the Methodological Norms implementing the Law no. 507/2002 on natural persons setting-up and developing economic activities, being aproved by the Government Decree nr. 58/2003 (Official Gazette of Romania no. 895/15 December 2003)

Conclusion

The information provided was not sufficient to determine whether or not these provisions could be accepted.

■ Article 19§1 (Right of migrants to assistance and information on migration)

Article 19
Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.

> 1. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;

ECSR Case-law presented by Mr T. AKILLIOGLU

This paragraph obliges States to provide free information and assistance services to nationals wishing to emigrate and to nationals of other Parties who wish to immigrate, reliable and objective information on necessary formalities; information on living and working conditions in the country (vocational guidance and training, social security, trade union membership, housing, social services, education and health).

States must take measures against misleading propaganda relating to immigration and emigration. Such measures should prevent the communication of misleading information to nationals leaving the country and act against false information targeted at migrant workers seeking to enter.

To be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia as well as women trafficking. Such measures, which should be aimed at the whole population, are necessary inter alia to counter the spread of stereotyped assumption that migrants are inclined to crime, violence, drug abuse or disease.

States must also take measures to raise awareness amongst law enforcement officials, such as awareness training of officials who are the first contact of migrant workers.

Situation in Romania

It was stated at the meeting that measures taken in connection with the Phare assistance programme (migrant information centres) should enable the country to comply with these provisions.

Reference was also made to the work of the Office of Migration and Manpower (www.omfm.ro).

Conclusion

The information provided was not sufficient to determine whether or not this provision could be accepted.

■ Article 19§2 (Right of migrants to assistance to facilitate their departure, journey and reception)

Article 19
Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.

> 2. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;

ECSR Case-law presented by Mr T. AKILLIOGLU

States must adopt special measures for the benefit of migrant workers beyond those provided for nationals to facilitate their departure, journey and reception.

Reception must include assistance with placement and integration in the workplace, and also with certain other problems, such as short-term accommodation, illness or shortage of money. It must also include adequate health measures.

Situation of Romania

No relavant information has been provided.

■ Article 19§3 (Right of migrants to co-operation between emigration and immigration services)

Article 19
Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.

> 3. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;

ECSR Case-law presented by Mr T. AKILLIOGLU

This paragraph does not just apply to immigrants but also to nationals who have emigrated to the territory of any other Party. Contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries. Formal arrangements are not necessary, especially if there is little migratory movement. Practical co–operation as the need arises may be sufficient.

Such co–operation is useful for example where the migrant worker who has left his or her family in the home country fails to send money back or must be contacted for family reasons or where the worker has returned to his or her country but needs to claim unpaid wages or benefits, or must deal with various issues in the country of employment.

Situation of Romania

Durant la réunion il a été renvoyé aux activités de l'Office de la migration et de la main d'œuvre (www.omfm.ro).

Conclusion

The information provided was not sufficient to determine whether or not this provision could be accepted.

■ Article 19§4 (Right of migrants to equal treatment in matters of employment, trade unions and housing)

Article 19
Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.

> 4. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:
>
> a remuneration and other employment and working conditions;
> b membership of trade unions and enjoyment of the benefits of collective bargaining;
> c accommodation;

ECSR Case-law presented by Mr T. AKILLIOGLU

This paragraph obliges States to secure for migrant workers treatment not less favourable than that of their own nationals in the area of remuneration and other employment and working conditions; trade union membership and enjoyment of benefits of collective bargaining and accommodation.

States are required to guarantee certain minimum standards intended to assist and improve the legal, social and material position of migrant workers and their families.

States should prove the absence of discrimination, direct or indirect, in terms of law and practice or should inform of any practical measures taken to remedy cases of discrimination. States should furthermore pursue a positive and continuous course of action providing for more favourable treatment of migrant workers.

> a remuneration and other employment and working conditions;
>
> States are obliged to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service training and promotion. The provision applies notably to vocational training.
>
> b membership of trade unions and enjoyment of the benefits of collective bargaining;
>
> States are obliged to eliminate all legal and de facto discrimination concerning trade union membership and enjoyment of the benefits of collective bargaining, including access to administrative and managerial posts in trade unions.

c accommodation;

States are obliged to eliminate all legal and de facto discrimination concerning access to public and also private housing. There must be no legal or de facto restrictions on home–buying, access to subsidised housing, or housing aids, such as loans or other allowances.

Situation of Romania

It was stated at the meeting that:

- the Labour Code (Act No. 53/2003) applied to foreign nationals and stateless persons who had an individual employment contract with a Romanian employer in Romanian territory (Section 2d);

- foreign nationals entitled to a form of social protection in Romania benefited from the right to housing. Act No. 114/1996 was currently being amended to allow individuals and organisations to build for their own use or for rental without distinction as to nationality;

- all employees enjoyed the right of association (Trade Union Act, No. 53/2003).

It was noted that eligibility for membership of the Economic and Social Council was still restricted to persons with Romanian nationality and that the situation had been found to be incompatible with Article 5 of the Revised Charter for this reason.

Conclusion

Under the current Romanian legislation, this provision could not be accepted.

■ Article 19§5 (Right of migrants to equal treatment with regards to taxes, dues and contributions)

Article 19
Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.

> 5. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;

ECSR Case-law presented by Mr T. AKILLIOGLU

This paragraph recognises the right of migrant workers to equal treatment in law and in practice regarding the payment of employment taxes, dues or contributions.

Situation of Romania

Tax Code Act, No. 571/2003
The Act prohibits discrimination in favour of any individual, whether or not resident in Romania, with regard to his or her taxable income in the country.

Conclusion

This provision could be accepted by Romania.

■ Article 19§6 (Right of migrants to family reunion)

Article 19
Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.

> 6. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;

ECSR Case-law presented by Mr T. AKILLIOGLU

This paragraph obliges States to allow the families of migrant workers legally established in their territory to join them. The worker's children entitled to family reunion are those (dependent and unmarried) who fall under the legal age-limit in the receiving state.

"Dependent" children are those who have no independent existence outside the family group, particularly for economic or health reasons, or because they are pursuing unpaid studies.

Conditions and restrictions of family reunion:

a) Refusal on health grounds

A state may not deny entry to its territory for the purpose of family reunion to a family member of a migrant worker for health reasons. Refusal may only be admitted for specific illnesses which are so serious as to endanger public health. These are the diseases requiring quarantine stipulated in the World Health Organisation's International Health Regulations of 1969, or other serious contagious or infectious diseases such as tuberculosis or syphilis. Very serious drug addiction or mental illness may justify refusal of family reunion, but only where the authorities establish on a case-by-case basis that the illness or condition constitutes a threat to public order or security.

b) Length of residence

States may require a certain length of residence of migrant workers before their family can join them. A period of a year is acceptable under the Charter. A period of three years is not in conformity with this provision of the Charter.

c) Housing condition

The requirement of having sufficient or suitable accommodation to house the family or certain family members should not be so restrictive as to prevent any family reunion.

d) Means requirement

The level of means required to bring in the family or certain family members should not be so restrictive as to prevent any family reunion.

Situation of Romania

Order No. 194/2002 sets the maximum age of family reunion at 18. Family members of migrant workers could only be refused entry into the country if they posed a threat to national security, public order, public health or morals.

Conclusion

The information provided was not sufficient to determine whether or not this provision could be accepted.

■ Article 19§9 (Right of migrant workers to transfer earnings and savings)

Article 19
Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.

> 9. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;

ECSR Case-law presented by Mr T. AKILLIOGLU

This provision obliges States not to place excessive restrictions on the right of migrant workers to transfer earnings and savings, either during their stay or when they leave.

Migrants must be allowed to transfer money to their own country or any other country.

This paragraph obliged countries not to impose excessive restrictions on migrant workers' right to transfer their earnings or savings, either during their stay or after their departure.

It must be possible to make such transfers to migrants' countries of origin or any other country.

Situation of Romania

During the meeting it was said that earnings and savings could be transfered without any restriction.

Conclusion

This provision could be accepted by Romania.

■ Article 19§10 (Right of self-employed migrant workers to protection and assistance)

Article 19
Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.

> 10. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply;

ECSR Case-law presented by Mr T. AKILLIOGLU

Under this paragraph, States must ensure that the protection and assistance provided for in paragraphs 1 to 9 and 11 and 12 are extended to self-employed migrant workers and their families.

States must ensure that there is no discrimination, in law or in practice on the one hand between salaried and self-employed migrants, and on the other hand, between self-employed migrants and self-employed nationals. However, even if there is full equality between salaried and self-employed migrants and between self-employed migrants and self-employed nationals, a violation of one of the nine first paragraphs of Article 19 will reflect on the conformity with paragraph 10.

Situation of Romania

No relevant information has been provided.

■ Article 19§11 (Right of migrants to the teaching the national language of the receiving state)

Article 19
Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.

> 11. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;

ECSR Case-law presented by Mr T. AKILLIOGLU

Under this paragraph, States should facilitate the teaching of the national language to children of school age, as well as to the migrant workers themselves and to members of their families who are no longer of school age. The teaching of the national language of the receiving state is the main means by which migrant workers and their families can integrate into the world of work and society at large.

The language of the receiving country is automatically taught to children throughout their formal education, but this measure is not sufficient to fulfil the obligations arising out of Article 19§11. States must endeavour to introduce support activities alongside formal schooling for migrant workers' children who have not attended the first few primary school years and who may therefore lag behind their classmates who are nationals of the receiving state.

States must furthermore encourage the teaching of the national language within undertakings and voluntary associations, or in public institutions such as universities. Such services must be provided free of charge in order not to worsen the already difficult position of migrant workers on the labour market.

The Romanian situation

The Government Decision no. 508/ 2001 modified and completed by the Government Decision no. 1420/2002 and the Education's Minister Order no. 3330/2004 regarding the access of the migrant worker's children from EU member states, to compulsory education in Romania transpose the provision of the Directive 77/486 on migrant worker's children education.

The Methodological Norms on schooling of children of migrant workers and ensuring qualified didactic personnel, as concerns teaching the national language (the Order of minister of education no. 3330/2004 Art. 1 (2-4), Art.2 (1) and Art. 5) provide for the following:

„in order to be enrolled within the compulsory education system in Romania, the children of the migrant workers who do not know the Romanian language shall attend and pass one year Romanian language courses, free of tuition fees, organised within the school units of the national education system. The local councils have the obligation to ensure the necessary budget for organising courses. The children having Romanian language knowledge shall pass, free of charge and exam organised by the school county inspectorates or by Bucharest school inspectorate."

The financing of the compulsory education for the children of the migrant workers is ensured in accordance with the financing of the public school education (Art. 7).

During the meeting it was said that the regulations take also into account the non EU nationals.

Conclusion

The information provided was not sufficient to determine whether or not this provision could be accepted.

■ Article 19§12 (Right of migrants to the teaching of their mother tongue)

Article 19
Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.

> 12. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

ECSR Case-law presented by Mr T. AKILLIOGLU

States must encourage and facilitate the teaching in schools or other structures, such as voluntary associations, of those tongues that are most represented among migrant workers wherever in their territory. In practical terms, States should encourage and facilitate the teaching of the mother tongue where there are a significant number of children who would follow such teachings.

The Romanian situation

The Government Decision no. 508/2001 modified and completed by the Government Decision no. 1420/2002 and the Education's Minister Order no. 3330/2004 regarding the access of the migrant worker's children from EU member states, to compulsory education in Romania transpose the provision of the Directive 77/486 on migrant worker's children education.

The Methodological Norms on schooling of children of migrant workers and ensuring qualified didactic personnel, as concerns teaching the national language (the Order of minister of education no. 3330/2004 Art. 6 par. (1) provide that „the Ministry of Education and Research establishes the adequate measures, in co-operation with the national authorities from the country of migrant worker in order to teach the mother tongue and the own culture during compulsory education".

During the meeting it was said that the regulations take also into account the non EU nationals.

Conclusion

The information provided was not sufficient to determine whether or not this provision could be accepted.

■ Article 22 (The right of workers to take part in the determination and improvement of the working conditions and working environment)

Article 22
Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking.

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

a to the determination and the improvement of the working conditions, work organisation and working environment;

b to the protection of health and safety within the undertaking;

c to the organisation of social and socio-cultural services and facilities within the undertaking;

d to the supervision of the observance of regulations on these matters.

ECSR Case-law presented by Mrs C. DUBOIS-HAMDI

Workers and/or their representatives (trade unions, worker's delegates, health and safety representatives, works councils) must be granted an effective right to participate in the decision-making process and the supervision of the observance of regulations in all the matters referred to in this provision.

The right to take part in the organisation of social and socio-cultural services and facilities only applies in undertakings where such services and facilities are planned or have been already established.

This provision applies to all undertakings of the private sector, including those managed by public authorities. States may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

Workers must have legal remedies when they are not respected. There must also be sanctions for employers which fail to fulfil their obligations under this Article.

The Romanian situation

Public sector Reference was made to Act no. 188/1999 concerning the status of civil servants (Articles 26 and 35) and Governement Decision nr 1210/2003 (Article 49).

Private sector

Labour Code :

Art. 179
(1) At each employer's level it settles a committee of security and health in labour in order to ensure the employees involvement at the elaboration and the application of the decisions in labour protection domain.
(2) The committee of security and health in labour is formed in the frame of legal persons of the public domain, private and co-operatist, including with foreign capital, who carry on activities on the Romanian territory.

Art. 214
To ensure the climate of stability and social peace, the Act shall regulate the modalities of consultations and permanent dialogue between the social partners.

Art. 217
(1) The trade unions are independent legal entities, without a patrimony purpose, established for the purpose of defending and promoting the collective and individual rights, as well as the professional, economic, social, cultural, and sporting interests of their members.
(2) A special Act shall regulate the terms and the procedure for trade unions acquiring legal status.
(3) The trade unions shall have the right to regulate, in their own statutes, their manner of organisation, association and administration, provided the statutes are adopted by means of a democratic procedure, according to the law.

Art. 218
The trade unions shall participate by means of their own representatives, according to the law, in negotiations and the conclusion of collective labour contracts, in talks or agreements with the public authorities and the employers' organisations, as well as in the structures typical of the social dialogue.

Art. 224
(1) With employers where more than 20 employees exist and if none of them is a trade union member, their interests can be promoted and defended by their representatives, specially elected and authorised for this purpose.

Art. 226
The employees' representatives shall have the following main duties:
a) to see that the employees' rights are complied with, in accordance with the legislation in force, the applicable collective labour contract, the individual labour contracts, and the company's rules and regulations;
b) to participate in the drawing up of the company's rules and regulations;
c) to promote the employees' interests concerning wages, work conditions, working time and rest time, labour stability, as well as any other professional, economic and social interests related to labour relationships;
d) to notify the labour inspectorate about the non-observance of the provisions of the Act and the applicable collective labour contract.

Art. 250
The employees have the right to strike with a view to defending their professional, economic, and social interests.

Order of the Ministry of Labour, Social Solidarity and of the Ministry of Health and Family No. 508/933/2000 regarding the approval of the General Norms of labour protection

Art. 12. The employees will develop the activity so as to not expose to dangers of injury or professional sickening own person or others employees, according with the preparation and the education in the labour protection domain received from his employer.
With that end in view the employees have the following obligations:
i) to co-operate with the employer and/or with the employees with specific competence in the field of security and health in labour, as long as necessary in order to give the possibility to the employer to ensure himself that all labour conditions are adequate and does not present risks for security and health at the working place ;

Art. 14(1) The employees and their representatives have the right to demand to the employer to take to proper measures and have the right to present their proposals for the elimination or the reduction of the accident risks and professional sickening.

Art. 18. The employer will take the necessary measures for that the employees with specific competence regarding the labour protection, as well as the representatives of the employees on the security and health in labour problems:

a) to be informed regarding the professional sickness risks for all the factors involved in the working process, the risks of injury and professional sickening, the corresponding measures of prevention and protection, including the ones regarding the first aid, the ones prevention and extinction of fires, and the evacuation of the personnel
b) to have access at the evaluation of the risks of injury and professional sickening and at the established measures of protection, at the records regarding the labour accidents and the professional diseases, at the research dossiers of the labour accidents, of the professional diseases, at the research dossiers of the accidents;

Art. 19. The employees and/or their representatives, with attributions regarding the health and labour security, can appeal to the competent authorities and to point out their observations during the inspections on problems of security and labour health, when they consider that the measures taken and the means ensured by the employer are inadequate to the purpose of prevention of the accidents and the professional sickening.

Art. 44 In order to ensure the employees' participation at the elaboration and the application of the decision in the area of the labour protection, in the units with a number of more than 50, it will be organised the Committee of security and health labour

Art.28.d) in the case when the number of the employees at the level of the legal persons is less than 50(including), there will be designated 1-2 persons with competencies in the area of the labour protection.
e) in the situation established at the point. d), if the employer is competent in the labour protection area, he can assume the attributions for the accomplishment of the security and the health of the employees, without designating other persons, in this purpose.

During the meeting, it was indicated that the Act 130/1996 as modified on collective agreements should also be taken into account as combined with the Labour Code it provides for judicial remedies in case of violation of the right enshrined in Article 22 of the Revised Charter.

It was also said that all workers in all sectors of economy are covered.

Conclusion

This provision could be accepted by Romania.

■ Article 23 (Right of elderly to social protection)

Article 23
Every elderly person has the right to social protection.

1. With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organizations, appropriate measures designed in particular to enable elderly persons to remain full members of society for as long as possible, by means of:

a adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;

b provision of information about services and facilities available for elderly persons and their opportunities to make use of them;

2. With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organizations, appropriate measures designed in particular to enable elderly persons to choose their lifestyle freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:

a provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;

b the health care and the services necessitated by their state;

3. With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organizations, appropriate measures designed in particular to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in their institution.

ECSR Case-law presented by Mrs C. DUBOIS-HAMDI

Article 23 recognises the right of elderly persons to social protection in the wide sense. It contains a list of measures/objectives to be pursued and specific rights to be protected in order to ensure the social protection of elderly persons, however it is clear from the explanatory report that this list is non exhaustive.

Article 23 is dynamic in the sense that the appropriate measures that are called for may evolve or change over time in response to new developments or needs.

On a general level the Committee has requested information on national policies for the elderly and on the level and development of national expenditure for social protection and services for the elderly. As well as measures to allow/encourage elderly persons remain in labour force.

Non-discrimination legislation (or similar) should exist at least in certain domains protecting persons against discrimination on grounds of age.

Elderly persons sometimes have reduced capacity making powers or no such powers or capacity therefore there should exist a procedure for 'assisted decision making.'

The main objective of the first paragraph of Article 23 is to enable elderly persons to remain full members of society, it then provides two means that may help to achieve this goal-adequate resources and information on services and facilities. According to the explanatory report the expression "full members" means that elderly persons must suffer no ostracism on account of their age, since the right to take part in society's various fields of activity is not granted or refused depending on whether an elderly persons has retired or is still vocationally active or whether such a person is still of full legal capacity or is still subject to some restrictions in this respect (diminutio capitis).

As regards the right to adequate resources the primary focus is on pensions. Pensions and other state benefits must be sufficient in order to allow elderly persons to lead a 'decent life' and play an active part in public social and cultural life. Information is sought on average wage levels in order to compare these with pension levels and the overall cost of living, as well as data on the income levels of elderly persons. Pensions must be linked index linked.

Information on the cost of transport as well as on the cost of medical care and medicines is also sought under this provision, as is information on the existence of a carer's allowance for family members who look after an elderly relative.

Although Article 23§1b only refers to the provision of information about services and facilities, the Committee considers 1§b of Article 23 as presupposing the existence of services and facilities, elderly persons have the right to certain services and facilities. Therefore the Committee examines information not only relating to the provision of information about these services and facilities but about these services and facilities themselves under this provision. In particular information is sought on the existence, extent and cost of home help services, community based services, specialised day care provision for persons with dementia and related illnesses and services such as information, training and respite care for families caring for elderly persons, in particular highly dependent persons, as well as cultural leisure and educational facilities available to elderly persons

The needs of elderly persons must be taken into account in national or local housing policies, the supply of adequate of appropriate housing for elderly person must be sufficient Housing law and policy must take account of the special needs of this group. National policies should help elderly persons to remain in their own homes for as long as possible through the provision of sheltered/supported housing and assistance for the adaptation of homes.

In the context of a right to adequate health care for elderly persons Article 23 requires that health care programmes and services (in particular primary health care services including domiciliary nursing/health care services) specifically aimed at the elderly must exist as well as guidelines on healthcare for elderly persons. In addition there should be mental health programmes for persons with dementia and related illnesses and adequate palliative care services.

Article 23§3 is concerned with the rights of elderly persons living in institutions. It provides that certain rights in this context must be guaranteed; the right to appropriate care and adequate services, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the institution, the protection of property and right to maintain personal contact with persons close to the elderly person and the right to complain about treatment and care in institutions.

There should be a sufficient supply of institutional facilities for elderly persons (public or private),

care in such institutions should be affordable and assistance must be available to cover the cost. All institutions must be licensed or approved and an independent inspection mechanism must exist to examine, in particular, the quality of care delivered.

Issues such as the requirements of staff qualifications, staff training and the wage levelsof staff, compulsory placement, social and cultural amenities and the use of physical restraints are also examined under this provision.

Situation of Romania

Special Assistance for Elderly Persons Act, No. 17/2000
This provided for various services for elderly persons, such as community and domiciliary services, and social and medical assistance in day centres or institutions.

Act No. 16/2000 on the establishment, organisation and activities of the National Council for Elderly Persons.

Emergency Order No. 150/2002 on health care.
Section 6e entitled pensioners to insurance without the need pay contributions.
Under Section 11.1 insured persons were entitled to a range of basic services in the event of sickness or accident from the first day until treatment was completed, under the conditions laid down in the order.
Chapter III listed the forms of care to which they were entitled: preventive and curative health services, medicines and other treatment and domiciliary care.
Under Section 13 non-insured persons were eligible for medical treatment in emergencies where there was an endemic or epidemic risk, as part of a range of minimum health services.

It was pointed out that the situation in Romania had been found to be incompatible with Article 12§1 of the Revised Charter because of the inadequate level of old age pensions.

Conclusion

This provision could not be accepted by Romania.

■ Article 26 (The right to dignity at work)

Article 26
All workers have the right to dignity at work.

> 1. With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers and workers' organisations, to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;
>
> 2. With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers and workers' organisations, to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

ECSR Case-law presented by Mr A. SWIATKOWSKI

Article 26§1

Sexual harassment is not necessarily a form of discrimination based on gender but always qualifies as a breach of equal treatment determined by a preferential or retaliatory attitude, directed towards one or more persons, or by an insistent attitude of other nature which may harm their dignity or their career.

There is no need for a state's legislation to make express reference to harassment where that state's Act encompassed measures making it possible to afford employees effective protection against the various forms of discrimination.

From a procedural standpoint, effective protection of employees requires somewhat of a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges.

This provision requires that employers be held liable towards persons employed or not employed by them who have suffered sexual harassment from employees under their responsibility or at premises under their responsibility from persons not employed by them such as independent contractors, self-employed workers, visitors, clients etc.

Victims of sexual harassment must be given effective legal remedies. These remedies must include reinstatement, where the employee has been dismissed in the context of a sexual harassment case, and appropriate damages, which should be sufficiently reparatory for the victim and sufficiently deterrent for the employer.

Furthermore, States are required to conduct awareness-raising campaigns to promote the protection against sexual harassment among social partners and the general public.

This provision affords protection against harassment at work other than sexual harassment. The triggering element for the harassment may be based on race, colour, religion, gender or any other specific quality of a person.

As far as legal protection and awareness raising are concerned the requirements are the same as

under Article 26§1.

Article 26§2

This provision affords protection against harassment at work other than sexual harassment. The triggering element for the harassment may be based on race, colour, religion, gender or any other specific quality of a person.

As far as legal protection and awareness raising are concerned the requirements are the same as under Article 26§1.

The Romanian situation

Private sector

Act no. 202/2002 on Equal opportunities

Article 10 states that sexual harassment is any behaviour that aims at:

a. creating in the workplace an atmosphere of intimidation, hostility or discouragement for the affected employee; or
b. negatively influencing the employee's personal situation with regard to his/her professional promotion, pay, access to formation, when the employee refuses relations of a sexual nature.

Article 11 adds that company statutes shall include disciplinary sanctions for employees violating other employee's right to dignity by discriminating against them. Employers shall also inform their employees, by way of posters, of the prohibition of sexual harassment.

Chapter VI deals with the settlement of gender discrimination disputes. Article 33 provides that employees have the right, when they consider themselves victims of gender discrimination, to complain and to request the support of a trade union or of an employee's representative. If mediation at the company's level fails, employees can institute proceedings in courts and obtain indemnities for their material or moral prejudice as well as the removing the consequences of the discrimination. Article 34 grants the same rights where discrimination takes place outside the labour field.

Chapter VII deals with sanctions, which range from 1.5 million lei to 15 million lei. Violations of the Act's provisions are certified, and fines imposed by Labour inspectors, Education inspectors, Health inspectors and Culture inspectors.

Article 19 prohibits advertisements which violate human dignity, offending on a gender basis someone's image or honour.

Article 32 provides that trade unions shall name, within each company's trade unions, representatives competent to ensure the respect of equal opportunities between women and men in the labour field. The representatives will take into considerations complaints emanating from victims of alleged gender discrimination and will try to solve the dispute.

During the meeting it was said that there has been no judicial case on sexual harassment so far.

Public sector

Act no. 188/1999 on civil servants status requires protection against any form of violence.

Conclusion

Subject to the interpretation that will be given by courts on the legal provisions, it appears that from a legal point of view Article 26§1 could be accepted by Romania.

The information provided under Article 26§2 was not sufficient to determine whether or not this provision could be accepted.

■ Article 27§§1 and 3 (Right of workers with family responsibilities to equal opportunities and equal treatment : access to employment, occupational reintegration, vocational guidance and training, conditions of employment and social security, child day care – prohibition of termination of employment)

Article 27
All persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities

1. With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake to take appropriate measures:

a to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;

b to take account of their needs in terms of conditions of employment and social security;

c to develop or promote services, public or private, in particular child day care services and other childcare arrangements;

3. With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

ECSR Case-law presented by Mr S. EVJU

Article 27§1

Actions must be taken to promote vocational training aimed at facilitating the remaining and the reintegration of workers with family responsibilities in the employment market. Particular attention should be devoted part-time workers' unemployment.

Worker's needs cannot be left to the mere employer's goodwill but must be provided is some binding legal instrument. Periods of unemployment due to family responsibilities should be taken into account in the calculation of pension schemes.

Where a State has accepted Article 16, childcare arrangements are dealt under that provision. In any event, under Article 27§1 parents should be allowed to reduce or cease work because of the serious illness of a child.

Family responsibilities must not be a valid ground for termination of employment. Workers

dismissed on such grounds must be afforded the same level of protection afforded in other cases of discriminatory dismissal under Article 1§2 of the Charter.

Article 27§3

Family responsibilities must not be a valid ground for termination of employment. Workers dismissed on such grounds must be afforded the same level of protection afforded in other cases of discriminatory dismissal under Article 1§2 of the Charter.

The Romanian situation

Article 27§1

The amendments to the Act No. 76/2002 aim the free of charge delivery of vocational training to persons who carry out activities in rural areas and do not earn any income or earn monthly incomes lower than the unemployment benefit and who are registered with the employment agencies, persons who are in one of the following situation*:*

- have resumed their activity at the end of the paid leave for child care until this one reaches the age of 2 or 3 years old in case of a disabled child;
- have resumed their activity after completing the compulsory military service;
- have resumed their activity in case of recovery of working capacity after retirement for disability reasons.

Article 27§3

It was referred to the information provided to the ECSR under Article 24 of the Revised Charter (right to protection against dismissal) and to the conclusion under this provision (Conclusions 2003).

Conclusion

The information provided under Article 27§1 was not sufficient to determine whether or not this provision could be accepted.

Given the protection provided against dismissal in general, Article 27§3 could be accepted by Romania.

■ Article 30 (Right to protection against poverty and social exclusion)

Article 30
Everyone has the right to protection against poverty and social exclusion.

> With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:
>
> a to take measures within the framework of an overall and co-ordinated approach 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, employment, housing, training, education, culture and social and medical assistance;
> b to review these measures with a view to their adaptation if necessary.

ECSR Case-law presented by Mr R. BRILLAT

By introducing into the Revised Charter a new Article 30, the Council of Europe member states considered that living in a situation of poverty and social exclusion violates the dignity of human beings. With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion Article 30 requires States parties to adopt an overall and coordinated approach, which shall consist of an analytical framework, a set of priorities and corresponding measures to prevent and remove obstacles to access to social rights as well as monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. It must link and integrate policies in a consistent way moving beyond a purely sectoral or target group approach.

The measures taken in pursuance of the approach must promote access to social rights, in particular employment, housing, training, education, culture and social and medical assistance. It should be noted that this is not an exhaustive listing of the areas in which measures must be taken to address the multidimensional poverty and exclusion phenomena. The measures should strengthen entitlement to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions. As long as poverty and social exclusion persist they should also represent an increase in the resources deployed to realize social rights.

Finally, the measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned. In this respect the definitions and measuring methodologies applied at the national level and the main data made available are systematically reviewed.

The Romanian situation

Article 43 of the Constitution – Living standard

(1) The State shall be bound to take measures of economic development and social protection, of a nature to ensure a decent living standard for its citizens.
(2) Citizens have the right to pensions, paid maternity leave, medical care in public health establishments, unemployment benefits, and other forms of social care, as provided by law.

Act No. 116/2002 on preventing and fighting social exclusion

This Act provides for a package of measures to improve access to work, housing medical care and education. It provides inter alia that person in receipt of the MGI benefit from social health insurance without paying insurance contributions.

NAE will achieve a personalized social accompaniment for the young persons facing difficulties and at risk of professional exclusion, with a view to facilitating the access to a job. For these persons, NAE annually works out and implements the national employment program for socially excluded persons, which is mainly targeting the employment or re-employment of the young persons of up to 35 years old through solidarity contracts concluded for a period of up to 2 years, but no less than 1 year. These contracts are concluded taking into account the following priorities:

- young persons from social care institutions and child social care institutions within the specialized public services and private bodies authorized in the child protection field;
- young single parents;
- young married persons with children in care;
- young married persons with no children in care;
- young married persons released from prison;
- other categories of young persons facing difficulties;

The employers who hire young persons based on a solidarity contract are named insertion employers and conclude with NAE conventions upon which the agency commits itself to monthly reimburse the basic wage established at the date the young persons are employed, but no more than 75% of the net average wage at national level. If, upon the termination of the solidarity contract, the insertion employers hire the persons envisaged at paragraph a) on open-ended individual labour contract, they will benefit from the monthly reimbursement of an amount representing 50% of the unemployment benefit the young beneficiary would have been entitled to, according to the law, in case he would have been laid-off.

The Unemployment Insurance Budget will finance the expenses necessary in order to implement the measures envisaging employers` stimulation and the national employment program for the persons at risk of social exclusion. In 2003, the expenses amounted to 15 bill.ROL and for 2004 193.3 bill.Rol are provided for.

In 2003, through the national employment program for socially excluded persons 1,934 persons were employed and 2,446 solidarity contracts were concluded while for 2004 is envisaged the conclusion of 3,700 solidarity contracts, which will lead to the employment of 3,000 persons.

Other pieces of legislation are as following:

- Ordinance no. 68/2003 regarding the social services
- Order of the Minister of Health (MH) 318/2003 for approval of the Norms regarding home healthcare and authorizing the physical or judicial persons providing this type of care, Off. J. 255/ April 12, 2003
- Order of the MH 559/2003 regarding the approval of the Methodological norms for evaluation and accreditation of the home healthcare providers, Off. J. 516/ June 17, 2003
- Government Decision 412/2003 for approval of the Norms regarding the organization, functioning and financing of the social-medical assistance units, Off. J. 260 / April 15, 2003 revised by the Instructions 1 and 507 / 2003 for enforcing the norms regarding the organization and financing of the social-medical assistance units,

Emergency Ordinance nr. 48/2003,

Article 5 beneficiaries of medical services provided in units of social-medical assistance are persons with chronic diseases who require permanently or temporally surveillance, assistance, care, treatment, and who due to social, economical, physical and physical reasons have no possibility to cover their own social needs and to develop their owns capacities and competences for social integrations.
Article 3 pct. 4 a) the revenues of the units of social-medical assistance are made from amounts reimbursed by the health insurance houses on the basis of contracts concluded for the financing of the medical personnel expenses, drugs and sanitary materials expenses in accord as frame contract.

Act no. 416/2001 providing for a minimum guaranteed income entered into force. The new law regulates the provision of social assistance to persons and families without income or with low income in situations where they cannot assure a minimum level of resources by their own efforts. The minimum guaranteed income (MGI) is granted by the local authorities and is calculated as the difference between a minimum income threshold established annually by Parliament and the monthly net income of the person or family. When determining the latter all income is taken into account, including social benefits, legal claims, student scholarships, etc.

Act No. 705/2001 on the national system of social assistance
The new law creates a single framework for the organization, functioning and financing of social assistance while increasing the involvement of regional and local authorities. It provides for a unitary system of social services and benefits orientated towards the most vulnerable groups with a view to avoiding their social exclusion.

Government Decision no. 705/2002 for the establishment, organization and functioning of the Anti-Poverty Board for the Promotion of Social Inclusion – CASPIS
Government Decision no. 829/2002 regarding the approval of the National Plan for Combating Poverty and to Promote Social Inclusion, Chapter 9, Objectives 1, 2, 3, 4, 5, 8, 10, 11, 12, 13,

In pursuance of Section 35 of Act No. 75/2001 an Inter-Ministerial Commission on Social Assistance was set up by Government Decision No. 773/2002 to provide strategic coordination in the area of social assistance. Moreover, in order to ensure coherence of policies to combat poverty CASPIS was created by Government Decision No. 705/2002 bringing together representatives of the Government, the social partners and civil society. CASPIS is responsible for preparing the National Anti-Poverty and Social Inclusion Action Plan (PNAinc) the first of which was adopted in July 2002 by Government Decision No. 829/2002.

Conclusion

The information provided was not sufficient to determine whether or not this provision could be accepted.

■ Article 31 (Right to housing)

Article 31
Everyone has the right to housing.

1. With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed to promote access to housing of an adequate standard.

2. With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed to prevent and reduce homelessness with a view to its gradual elimination.

3. With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed to make the price of housing accessible to those without adequate resources.

ECSR Case-law presented by Mr Tekin AKILLIOGLU

States must guarantee the right to adequate housing.

The notion of adequate housing must be defined in law. Adequate housing means a dwelling which is structurally secure, safe from a sanitary and health point of view and not overcrowded, with secure tenure supported by the law.

This definition means that:

a dwelling is safe from a sanitary and health point of view if it possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity, etc and if specific dangers such as, for example, the presence of lead or asbestos are under control.
over-crowding means that the size of the dwelling is not suitable in light of the number of persons and the composition of the household in residence.
security of tenure means protection from forced eviction and other threats (dealt with under paragraph 2).

The standards of adequate housing shall be applied not only to new constructions, but also gradually, in the case of renovation, to the existing housing stock. They shall also be applied to housing available for rent as well as to housing occupied by their owners.

It is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also guard against the interruption of essential services such as water, electricity and telephone.

The effectiveness of the right to adequate housing implies its legal protection. This means that tenants or occupiers are given access to affordable and impartial judicial remedies.

Equal treatment with respect to housing must be guaranteed, in particular, to the different groups of vulnerable persons, particularly low-income persons, unemployed, single parent households, young persons, persons with disabilities including mental health problems.

With regards to homelessness reactive and preventive measures must be taken.

Homeless are those individuals not legally having at their disposal a dwelling or another form of adequate shelter. The temporary supply of shelter, even adequate, cannot be held as satisfactory and the individuals living in such conditions and who wish so, should be provided with adequate housing within a reasonable period.

States must gradually reduce homelessness with a view to its elimination. Reducing homelessness implies the introduction of measures, such as the provision of immediate shelter and care for the homeless and measures to help such people overcome their difficulties and prevent a return to homelessness.

States must also act to prevent categories of vulnerable people from becoming homeless. To this purpose they must implement a housing policy for all disadvantaged groups of people to ensure access to social housing. Nationals of the other Parties who are lawfully resident or regularly working in the country must be treated equally with respect to access to social housing.

States must set up procedures to limit the risk of evictions and to ensure that when these do take place, they are carried out under conditions which respect the dignity of the persons concerned.

Forced eviction can be defined as the deprivation of housing which a person occupied due to insolvency or wrongful occupation. Legal protection for persons threatened by eviction must include, in particular, an obligation to consult with the affected parties in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction. The law must also prohibit evictions carried out at night or during winter and provide legal remedies and offer legal aid to those who are in need to seek redress from the courts. Compensation for illegal evictions must also be provided. When an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.

Equal treatment with respect to housing must be guaranteed, in particular, to the different groups of vulnerable persons, particularly low-income persons, unemployed, single parent households, young persons, persons with disabilities including mental health problems.
An adequate supply of affordable housing must be ensured.

Housing is affordable when the household can afford to pay the initial costs (deposit, advance rent), the current rent and/or other costs (utility, maintenance and management charges) on a long-term basis and still be able to maintain a minimum standard of living, as defined by the society in which the household is located.

In order to increase the supply of affordable housing, it is incumbent on states to:

– adopt appropriate measures for the construction of housing, in particular social housing;
– introduce housing benefits for the low-income and disadvantaged sectors of the population.

Equal treatment with respect to housing must be guaranteed, in particular, to the different groups of vulnerable persons, particularly low-income persons, unemployed, single parent households, young persons, persons with disabilities including mental health problems.

Conclusion

The information provided on the situation in law was only available in Romanian. Due to the extensive approach taken by the Committee in assessing the situations and the need for detailed information, including information on the situation in practice, it was considered impossible to determine whether Romania could accept this provision.