



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

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THIRD REPORT

**ON THE NON-ACCEPTED PROVISIONS
OF THE EUROPEAN SOCIAL CHARTER**

ROMANIA

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I. SUMMARY

1. Background

With respect to the procedure provided by Article 22 of the 1961 Charter – examination of non-accepted provisions - the Committee of Ministers decided in December 2002 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" (Decision of the Committee of Ministers of 11 December 2002).

Following this decision, it was agreed that the European Committee of Social Rights examines - in a meeting or by written procedure - the actual legal situation and the situation in practice in the countries concerned from the point of view of the degree of conformity of the situation with non-accepted provisions. This review would be done for the first time five years after the ratification of the Revised European Social Charter, and every five years thereafter, to assess the situation on an ongoing basis and to encourage States to accept new provisions. Indeed, experience has shown that States tend to forget that the selective acceptance of the provisions of the Charter should be only a temporary phenomenon.

2. Previous Examinations

As Romania ratified the Charter on 7 May 1999, the procedure provided by Article 22 of the 1961 Charter was applied for the first time in the context of a meeting between the European Committee of Social Rights and representatives of various Romanian ministries in Bucharest on 18 and 19 May 2004. The Bucharest meeting was the second under the new procedure adopted by the Committee of Ministers in December 2002.

Following this meeting, the European Committee of Social Rights delegation at the time concluded that immediate acceptance seemed possible in respect of the following Articles: 2§3, 3§4, 15§3, 19§5, 19§9, 22, 26§1, 27§3.

The Committee further considered that acceptance was not immediately possible in respect of the following Articles: 13§4, 19§4, 23.

As regards the following non-accepted provisions, the Committee was of the view that the information provided was not sufficient to allow an assessment: Articles 10§§1-5, 14, 18§§1 and 2, 19§§1-3, 19§6, 19§10, 19§11, 19§12, 26§2, 27§1, 30, 31§§1-3.

With a view to carrying out the procedure for the second time, the Romanian authorities were invited to organise a meeting which took place in Bucharest on 6 May 2009. Following this meeting, the European Committee of Social Rights delegation at the time confirmed that from the point of view of the situation in law and in practice there were no obstacles to the immediate acceptance of the following provisions: Articles 2§3, 19§9 and 27§3.

Furthermore, the Committee considered that the acceptance of the following provisions was also possible: Articles 10§1, 10§§4-5 and 19§§1-3.

Moreover, the Committee considered that, subject to some improvements in practice, Romania could accept the following provisions: Articles 3§4, 10§3 and 15§3.

The Committee further considered that acceptance was not immediately possible in respect of the following provisions: Articles 10§2, 14§§1-2, 18§§1-2, 22, 26§§1-2, 27§1 and 30.

Finally, as regards Articles: 19§§4-6, 19§§10-12, 27§2 and 31§§1-3, the Committee found that the information provided was not sufficient to allow an assessment.

3. Current Examination

With a view to carrying out the procedure for the third time in 2014, the Romanian authorities were invited to provide written information on the non-accepted provisions. The Romanian Government submitted a report on the non-accepted provisions of the European Social Charter on 25 April 2014.

Having examined the written information, the Committee confirms that from the point of view of the situation in law and in practice there are no obstacles to the immediate acceptance of Articles: 2§3, 10§§1-5, 19§§1-5, 27§1, 27§3.

Moreover, the Committee considers that the acceptance of the following provisions is also possible: 19§9, 22, 26§§1-2.

Furthermore, the Committee considers that, subject to some improvements in practice or with respect to data collection mechanisms, Romania could accept the following provisions: 3§4, 14§§1-2, 15§3, 18§1, 19§6, 23.

The Committee is of the view that further analysis of the legislation and practice is needed in respect of the following provisions: 13§4, 18§2, 30, 31§1.

Finally, the Committee finds that the information provided in the report is not sufficient to allow an assessment with regard to Articles: 19§§10-12, 31§§2-3.

II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS

The description of the situation in Romania set out for the different provisions below is based on the written information provided by the Romanian authorities.

Article 2 The right to just conditions of work

Article 2§3 With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

- to provide for a minimum of four weeks' annual holiday with pay (Article 2§3);

Situation in Romania

According to the report, the Labour Code guarantees the right to paid annual leave to all employees for a minimum duration of 20 working days. The actual length of the annual leave shall be laid down in the applicable collective agreement, shall be provided for in the individual employment contract and shall be granted in proportion to the activity performed in a calendar year.

The Labour Code provides that the right to annual rest leave may not be subject to any waiver, assignment or limitation. The leave shall be taken each year. An employer shall grant a leave until the end of the next year, to all employees who, within a calendar year did not take the entire leave they were entitled to. The compensation in money of the leave not taken shall only be allowed at the termination of the individual employment contract. The Labour Code further provides that the annual leave may be suspended at the request of the employee for objective reasons.

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Article 2§3 guarantees the right to a minimum of four weeks (or 20 working days) 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.¹ Workers may be required to have been employed for twelve months before they become eligible for annual paid leave.²

An employee must take at least two weeks uninterrupted annual holidays during the year the holidays were due. Annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement.³

Workers who suffer from illness or injury during their annual leave are entitled to take the days lost at another time so that they receive the four week annual holiday provided for under this paragraph, possibly under the condition of producing a medical certificate.⁴

In the light of the case law of the Committee and the current legal situation and practice, Article 2§3 of the Charter could be immediately accepted by Romania.

Article 3 The right to safe and healthy working conditions

Article 3§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

Situation in Romania

The report indicates that according to Law No. 319/2006 on Safety and Health at Work, the employer is obliged to ensure the safety and health of the employees in every aspect related to work. This law applies to all activities of both public and private sectors.

The same law lays down the employers' obligations of ensuring the health and safety of employees, including the obligation of ensuring the prevention and protection through designated workers or external services contracted for that purpose. The employer cannot be exonerated from its responsibilities of ensuring the health and safety of employees, when using external services for that purpose.

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Under Article 3§4, all workers in all branches of economic activity and all companies must have access to occupational health services.⁵ These services may be run jointly by several companies.⁶ In all cases, those services must be efficient.⁷ If occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose.⁸

¹ Conclusions I (1969), Ireland.

² Conclusions I (1969), Norway, Sweden

³ Conclusions 2007, Statement of interpretation on Article 2§3.

⁴ Conclusions XII-2 (1992), Statement of Interpretation on Article 2§3.

⁵ Conclusions 2009, Turkey

⁶ Conclusions 2003, Statement of Interpretation on Article 3§4; Conclusions 2003, Bulgaria

⁷ Conclusions 2009, Slovenia

⁸ Conclusions 2003, Bulgaria

In the light of the case law and the current legal framework, the Committee is of the view that Romania could accept Article 3§4. The Committee encourages the authorities to collect and provide clear indicators on occupational health services (such as the number of beneficiaries of the services in question and the conditions of access to these health services) to facilitate the evaluation of the situation.

Article 10 The right to vocational training

Article 10§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.

Situation in Romania

Vocational and technical education is provided in Romania. The legislation provides for high school education technological courses, vocational education, post high – school education, higher education and adult vocational training (initial and continuing training).

Vocational and technical schools may consult with the employers on the training needs through vocational education and their availability to conclude framework agreements and apprenticeship conventions for students. Training through vocational education is organised both in schools and at the employer's workplace. In practice, the number of companies involved in the practical training of students increased with 50% in 2013.

According to the report, the access to all levels and forms of education and higher education and lifelong learning is ensured to the citizens of the other Member States of the European Union, of the states belonging to the European Economic Area and Switzerland, as well as to minors seeking or who have obtained a form of protection in Romania, foreign minors and stateless minors whose stay in Romania is officially recognized by law. The Ministry of National Education applies a uniform procedure for recognition of studies previously done abroad by non-nationals, in order to obtain the access to vocational training in Romania.

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The right to vocational training must be guaranteed to everyone.⁹

In order to provide for vocational training States must:¹⁰

- ensure general and vocational secondary education, university and non-university higher education; and other forms of vocational training;¹¹
- build bridges between secondary vocational education and university and non-university higher education;
- introduce 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;
- take measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market;

⁹ Conclusions I (1969), Statement of Interpretation on Article 10§1

¹⁰ Conclusions 2003, France

¹¹ Conclusions 2007, Ireland

- introduce mechanisms for the recognition of qualifications awarded by continuing vocational education and training.

In the light of the current case law and the current legal framework which covers all forms of technical and vocational training, the Committee considers that Article 10§1 could be immediately accepted by Romania.

Article 10§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.

Situation in Romania

According to the report, Law No. 279/2005 on Apprenticeship at the Work Place was amended through Law No. 106/2011 and Law No. 179/2013 in order to create the framework to ensure the certification of competences and skills obtained during apprenticeship, and to encourage employers to provide training with the help of apprenticeship. Apprenticeship at the work place concerns people over 16 years, who want to focus on learning from real, concrete professional situations, by practicing an occupation directly at a work place.

Apprenticeship is conducted under the terms of the apprenticeship agreement concluded between the apprentice and the employer who undertakes to ensure the payment of the apprentice and all the necessary conditions for training. Professional training through apprenticeship at the work place consists in theoretical and practical training.

The report indicates that young persons have also access to training services provided to the persons looking for a job according to the provisions of Law No.76/2002. It is reported that 36,124 unemployed persons participated to training programs organised until the end of 2013. The report indicates that 34.4% of the persons who participated were under 25 years and 21.8% were aged between 25-35 years.

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According to Article 10§2, young people have the right to access to apprenticeship and other training arrangements. Apprenticeship can mean training based on a contract of employment between the employer and the apprentice and leading to vocational education;¹² whereas other training arrangements can be based on a school-based vocational training.¹³ They both must combine theoretical and practical training and close ties must be maintained between training establishments and the working world.¹⁴ 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; termination of the apprenticeship contract.¹⁵ The main indicators of compliance are the existence of apprenticeship and other training arrangements for young people, the number of people enrolled, the total spending, both public and private, on these types of training and the availability of places for all those seeking them.¹⁶

In the light of the current legal situation and practice on apprenticeships, this provision could be immediately accepted by Romania. The information on the abovementioned indicators of compliance will be of importance in assessing the conformity of the situation with the requirements of the Charter.

¹² Conclusions XIX-1 (2008), Slovak Republic

¹³ Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§2

¹⁴ Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§2

¹⁵ Conclusions XVI-2 (2003), Malta

¹⁶ Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§2

Article 10§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 retraining of adult workers needed as a result of technological development or new trends in employment.

Situation in Romania

The report indicates that continuing vocational training is provided to employed and unemployed persons according to the relevant laws. Government Ordinance No. 129/2000 on Adult Professional Training establishes the general conditions in which training programs may be provided to both employees and unemployed persons, including the types of programs, namely initiation, training, retraining and specialisation.

The report indicates that in 2010, comparing to the total number of enterprises which represented the reference population of the statistical research “Professional training in enterprises in Romania” in 2010, the percentage of the ones which provided continuing vocational training (CVT) to their employees increased to 24.1%. Of all enterprises which provided CVT to their employees, 82.7% decided to train their employees through different forms of CVT (other than courses), while 66.3% provided courses (internal and/or external) to their employees. Over 7,000 enterprises organised the training of their employees through courses, the overall rate of participation in the CVT courses was 17.8%, while the rate of participation in the CVT courses in 2010 was 41.2%.

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The right to continuing vocational training must be guaranteed to employed and unemployed persons, including young unemployed people. 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 overall participation rate of persons in training and the gender balance, the percentage of employees participating in continuing vocational training, and the total expenditure.¹⁷

In the light of the current legal situation and practice, the Committee considers that Article 10§3 could be immediately accepted by Romania. Data on the abovementioned indicators of compliance will be of importance in assessing the conformity of the situation with the requirements of the Charter.

Article 10§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.

Situation in Romania

Law No. 76/2002 provides that the unemployed persons, including the young unemployed persons benefit of free professional training programs (to ensure the initiation, training, retraining, improvement and specialisation of people looking for a job). The unemployed persons benefit from more support measures such as: information and vocational

¹⁷ Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§3

counselling, labour mediation, assessment and skills certification acquired in other ways than the formal ones, counselling and assistance to start a new independent activity or to initiate a business, employment and relocation incentives to stimulate mobility.

According to the report, by the end of 2013, 4,808 long-term unemployed persons, including young people, participated in training courses. As reported in the first semester of 2013, the share of long-term unemployed persons' participation in vocational training courses was 13.8%.

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In accordance with Article 10§4, States must fight long-term unemployment through retraining and reintegration measures. A person who has been without work for 12 months or more is long-term unemployed.¹⁸ 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, the special attention given to young long-term unemployed, and the impact of the measures on reducing long-term unemployment.

In the light of the case law and the current legal situation and practice, the Committee considers that Romania could accept this provision of the Charter.

Article 10§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.

Situation in Romania

According to the report, since 2012, vocational scholarship is offered to all students attending the vocational education and consists in a monthly financial support of RON 200, an amount which will be annually modified by Government decision on a proposal of the Ministry of Education, Research, Youth and Sports.

Under Law No. 335 of 10 December 2013 on Internship of the Higher Education Graduates, employers who conclude an internship agreement, will receive, at request, during the period of the internship, an allowance equal to 1.5 times the value of the reference social indicator on unemployment insurance and stimulation of employment, provided by Law No. 76/2002, within the limits of the funds allocated for this purpose.

According to legislation, free vocational training courses for unemployed people are provided once for each period that unemployed persons are looking for a job. Employers receive support in providing vocational training to their own employees, being financially stimulated to increase their offer of apprenticeships and internships. The tripartite structure of the National Employment Agency makes possible the involvement of the employers' and employees' representatives in the process of supervising the apprenticeship at work.

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While paragraphs 1 to 4 of Article 10 mainly deal with the right of access to vocational training and continuing vocational training, paragraph 5 focuses on complementary measures which are nonetheless fundamental to make access effective in practice, such as reducing or abolishing any fees or charges or granting financial assistance in appropriate cases.

States must evaluate their vocational training programmes for young workers, including the apprenticeships. In particular, the participation of employers' and workers' organisations is required in the supervision process.¹⁹

¹⁸ Conclusions 2003, Italy

¹⁹ Conclusions XIV-2 (1998), United Kingdom

In view of the case law and the current legal situation and practice, the Committee considers that Romania could accept Article 10§5 of the Charter.

Article 13 The right to social and medical assistance

Article 13§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 11December 1953.

Situation in Romania

The report indicates that according to Law No. 95/2006 on Healthcare Reform, the following categories of persons are insured in the health insurance system in Romania, the contributions being paid by the state budget: foreign citizens from the accommodation centres who are going to be returned or expelled, as well as those who are victims of the human trafficking, who are in the process of the necessary procedures to establish their identity and are accommodated in special centres arranged according to the law; people who are part of a family that has the right to social welfare, according to Law No. 416/2001 regarding the Minimum Guaranteed Income.

The report indicates that applicants for asylum have the right to benefit, on request, of assistance necessary for personal care, in the situation of lack of material means. The amounts provided for food, accommodation and other expenses are established by Government decision and paid by the state budget. They also have the right to receive free medical assistance and proper treatment, emergency hospital assistance, as well as medical assistance and free treatment in the cases of chronic or acute diseases, life-threatening imminent conditions. Minors, pregnant women, chronically ill persons who request asylum have the same rights as the Romanian citizens, therefore they benefit from free medical assistance and treatment.

According to Government Ordinance No. 194/2002 on the Regime of Foreign People in Romania, foreign people accommodated in public custody centres, have the right to legal, medical and social assistance, and the right to have an opinion on religious, philosophical and cultural matters; the right to medical assistance, medicines and free medical supplies.

Furthermore, foreign nationals with refugee status and who have obtained international protection in Romania benefit of social and healthcare assistance on an equal footing with the Romanian citizens.

The report indicates that foreign nationals with the right to a long-term stay benefit of social and health assistance and protection under the same conditions with Romanian citizens.

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Article 13§4 grants non-resident foreign nationals entitlement to emergency social and medical assistance. Article 13§4 therefore refers to “nationals of other Contracting Parties lawfully within their territories”. Accordingly, the beneficiaries of this right to emergency social and medical assistance are foreign nationals who are lawfully present in a particular country but do not have resident status.²⁰

States are required to provide non-resident foreigners without resources – whether legally present or in an irregular situation - emergency social and medical assistance (accommodation, food, emergency care and clothing) to cope with an urgent and serious

²⁰ Conclusions XIV-1 (1998), Statement of Interpretation on Article 13§4

state of need (without interpreting too narrowly the “urgency” and “seriousness” criteria).²¹ They are not required to apply the guaranteed income arrangements under their social protection systems.²²

The provision of free²³ emergency medical care must be governed by the individual's particular state of health.²⁴ The Committee furthermore considered that migrant minors in an irregular situation in a country are entitled to receive health care extending beyond urgent medical assistance and including primary and secondary care, as well as psychological assistance.²⁵

The requirement to accept and apply the Article 13§4 provision on repatriation is not conditional on ratification of the 1953 Convention, which means that States that are bound by Article 13§4 must also comply with the Convention provisions on the conditions and arrangements for repatriation of nationals of States Parties that have not ratified the Convention. According to the Appendix to Article 13§3, states that have ratified the Charter but are not parties to the Convention may accept Article 13§4, "provided that they grant to nationals of other [states that have ratified the Charter] a treatment which is in conformity with the provisions of the said convention".

According to the report, applicants for asylum, refugees and foreigners in public custody centres are entitled to medical and social assistance. The Committee underlines that this provision refers to emergency social and medical assistance granted to foreign nationals who are lawfully present in Romania but do not have resident status.

The situation as described above may raise problems of conformity under the Charter, but Romania could accept this provision subject to further consideration of the emergency assistance granted to non-resident foreign nationals. Information on the situation in practice is necessary to evaluate the situation. The Committee invites Romania to continue its consideration of this provision with a view to its possible acceptance in the near future.

Article 14 The right to benefit from social welfare services

Article 14§1 With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:

- to promote and 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.

Situation in Romania

In Romania, the organisation and operation of social services are established through Government Ordinance No. 68/2003 and Law No. 292/2011 on Social Assistance.

According to the categories of beneficiaries, social services may be classified in social services for child and/or family, people with disabilities, elderly people, victims of domestic violence, homeless people, people with various addictions, such as alcohol, drugs, other toxic substances, internet, gambling etc., victims of human trafficking, detainees, persons subject of an educational measure or a non-custodial sentence, who are under the supervision of the probation services, people with mental illness, people from isolated communities, long-term unemployed people, and support social services for the beneficiaries' carers.

²¹ Médecins du Monde – International v. France, complaint No. 67/2011, decision on the merits of 11 September 2012: §178

²² Conclusions XIII-4 (1996), Statement of Interpretation on Article 13

²³ Conclusions XX-2 (2013), Czech Republic

²⁴ Conclusions XIV-1 (1998), Iceland

²⁵ Défense des enfants international v. Belgium (DEI), complaint No. 69/2011, decision on the merits of 23 October 2012, §128

The report indicates that based on the conditions of assistance, social services may be classified as follows:

- a) Services with accommodation, on fixed-term or long term period, such as residential centres, group homes, night shelters;
- b) Services without accommodation such as day care centres, centres and/or home care units, mobile services providing food, social ambulance.

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Article 14§1 guarantees the right to general social welfare services. The right to benefit from social welfare services must potentially apply to the whole population, which distinguishes the right guaranteed by Article 14 from “the various articles of the Charter which require States to provide social welfare services with a narrowly specialised objective”.

The provision of social welfare services concerns everybody who find themselves in a situation of dependency, in particular the vulnerable groups and individuals who have a social problem. The Committee therefore verifies that social services are available to all categories of the population who are likely to need them. It has identified the following groups: children, the elderly, people with disabilities, young people in difficulty and young offenders, minorities (migrants, Roma, refugees, etc.), the homeless, alcoholics and drug addicts, battered women and former detainees. The list is not exhaustive as the right to social welfare services must be open to all individuals and groups in the community. It does, however, give an idea of the groups in which the Committee systematically takes an interest because of their more vulnerable situation in society.

The right to social services must be guaranteed in law and in practice. Social services must have resources matching their responsibilities and the changing needs of users. This implies that: (i) staff shall be qualified and in sufficient numbers; (ii) decision-making shall be as close to users as possible; (iii) there must be mechanisms for supervising the adequacy of services, public as well as private.

The Committee welcomes the reform made in particular with the adoption of Law No. 292/2011 on Social Assistance. In view of the case law and the current legal framework, it therefore considers that Romania could accept Article 14§1 of the Charter. The Committee encourages the Government to take measures to improve the mechanisms for supervising the adequacy of services as well as the data collection mechanisms in relation to this provision.

Article 14§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.

Situation in Romania

The report indicates that social services providers are public or private individuals or legal entities. Social services are financed from the following sources: state budget, local budgets, donations, sponsorships and other contributions from individuals or legal entities in the country and abroad, external refundable and non-refundable funds, the contributions of the beneficiaries, and other sources in compliance with the law.

The report indicates that since 1998, the Ministry of Labour, Family, Social Protection and Elderly annually grants subsidies to Romanian associations and foundations with legal personality providing social services.

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Article 14§2 requires States to provide support for voluntary associations seeking to establish social welfare services.²⁶ This does not imply a uniform 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 (non-governmental organisations and other associations), private individuals, and private firms.

The Committee examines all forms of support and care mentioned under Article 14§1 as well as financial assistance or tax incentives for the same purpose. It also verifies that the Parties ensure that private services are accessible on an equal footing to all and are effective, in conformity with the criteria mentioned in Article 14§1. Specifically, Parties must ensure that public and private services are properly coordinated, and that efficiency does not suffer because of the number of providers involved. In order to control the quality of services and ensure the rights of the users as well as the respect of human dignity and basic freedoms, effective preventive and reparative supervisory system is required.

In view of the current legal framework and practice, the Committee considers that Article 14§2 of the Charter could be accepted by Romania. Information on the supervision of the quality of social services would be of great importance to assess the situation in practice.

Article 15 The right to benefit from social welfare services

Article 15§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.

Situation in Romania

The report indicates that Law No. 448/2006 on the Protection and Promotion of the Rights of Persons with Disabilities primarily promotes active measures of protection and personal independence, and lays down the rights of the persons with disabilities with the purpose of their integration and social inclusion.

The report underlines that Law No. 448/2006 is developed on the “disabled person, a full rights citizen”. To this aim, this law defines the concept of “access for all” and establishes obligations and deadlines for authorities to adapt the public buildings, access ways, residential buildings built with public funds, means of transportation and their stations, parking spaces, public roads and streets, public telephones, informational and communicational environment, so that free access is permitted to persons with disabilities.

Authorities are also under the obligation to adapt all public means of transportation in circulation, the stations of the means of public transportation, including providing with tactile pavement the access spaces to the front door of the transportation vehicle, installing billboards corresponding to the needs of persons with visual and hearing disability in the public transportation means, printing in large letters and contrasting colours the routes and the codes of the public transportation means.

²⁶ Conclusions 2005, Statement of Interpretation on Article 14§2

The report indicates that measures are taken to eliminate the barriers regarding the communication and mobility of the persons with disabilities in the construction field (involving the persons with disabilities in developing and reviewing the urbanism plan and the territory planning by facilitating the access for people with sensorial disabilities to the information categories of the urbanism plan and the arrangement of the territory, as well as providing the opportunity of the persons with disabilities to develop proposals regarding the accessibility, infrastructure and mobility, in accordance with each category of plans); electronic communication, audio-visual communication and postal services. For people with visual or reading disability, publishers have the obligation to make available, for free, the electronic moulds used to publish books and magazines, to be converted in accessible format.

Under Law on Social Assistance No. 905/2011, the relevant public authorities have the obligation to ensure all the necessary measures designed for persons with disabilities in order to facilitate the active participation in the community of which the person belongs or in the society in general. The report indicates that “97% of the persons with disabilities are living in the community in Romania”.

The National Strategy on Social Inclusion of the Persons with Disabilities 2014-2020 was developed, which has the mission to continue and develop the approach initiated by the previous national strategy, namely to improve social integration and participation in the life of the community for the persons with disabilities.

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The right of persons with disabilities to social integration provided for by Article 15§3 implies that barriers to communication and mobility be removed in order to enable access to transport (land, rail, sea and air), housing (public, social and private), cultural activities and leisure (social and sporting activities).²⁷ To this purpose Article 15§3 requires.²⁸

- the existence of comprehensive non-discrimination legislation covering both the public and private sphere in fields such as housing, transport, telecommunications and cultural and leisure activities and effective remedies for those who have been unlawfully treated. Such legislation may consist of general anti-discrimination legislation, specific legislation or a combination of the two.²⁹

- the adoption of 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 should have a voice in the design, implementation and review of such a policy.³⁰ Telecommunications and new information technology must be accessible³¹ and sign language must have an official status.³² Public transports (land, rail, sea and air), all newly constructed or renovated public buildings, facilities and buildings open to the public, and cultural and leisure activities should be physically accessible.³³ The needs of persons with disabilities must be taken into account in housing policies, including the construction of an adequate supply of suitable, public, social or private, housing. Further, financial assistance should be provided for the adaptation of existing housing.³⁴

In the light of the case law and the current legal framework, Article 15§3 could be accepted by Romania. The situation in practice would be of importance in order to assess the extent to

²⁷ Conclusions 2005, Norway

²⁸ Conclusions 2007, Slovenia

²⁹ Conclusions 2012, Estonia

³⁰ Conclusions 2003, Italy

³¹ Conclusions 2005, Estonia

³² Conclusions 2003, Slovenia

³³ Conclusions 2003, Italy

³⁴ Conclusions 2003, Italy

which the effective exercise of the right to independence, social integration and participation in the life of the community of persons with disabilities is ensured.

Article 18 The right to engage in a gainful occupation in the territory of other Parties

Article 18§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;

Situation in Romania

The report indicates that the Government Ordinance No. 56/2007 on the Employment and Secondment of Foreigners in Romania lays down the requirements, conditions and terms to be met so that work permits to foreign nationals are issued by the responsible authorities. The national legislation does not oblige the foreign citizens to be on the territory of Romania at the time when the work permit is issued.

The work permit is issued at the request of the employer. However, the formalities of obtaining a work permit are quite complex. The report provides some statistics in relation to the number and types of work permits issued to foreign citizens within the period 2009 – 2013.

Opinion of the European Committee of Social Rights

Article 18 applies to employees and the self-employed who are nationals of States Parties to the Charter. It also covers members of their family allowed into the country for the purposes of family reunion.³⁵ Article 18 relates not only to workers already on the territory of the State concerned, but also to workers outside the country applying for a permit to work on the territory.³⁶ This article also covers foreign workers who have obtained employment in a foreign country but subsequently lose it.³⁷

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.³⁸

In the light of the case law and the current legal situation and practice, the Committee considers that Romania could accept this provision. The figures showing the refusal rates for work permits would be essential in assessing the situation in practice. To this aim, the data collection mechanisms could be improved.

Article 18§2

- to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers.

Situation in Romania

The report indicates that the legal framework is the same as for Article 18§1 of the Charter, namely the Government Ordinance No. 56/2007 on the Employment and Secondment of Foreigners in Romania. The formalities for obtaining a work permit by a foreign worker remain complex.

³⁵ Conclusions X-2, Austria, p. 137.

³⁶ Conclusions XIII-1, Sweden, p. 204.

³⁷ Conclusions II, Denmark, Germany, Ireland, Italy, United Kingdom, p. 61.

³⁸ Conclusions XVII-2, Spain, p. 747.

Opinion of the European Committee of Social Rights

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. Formalities and dues and other charges are one of the aspects of regulations governing the employment of workers also covered by paragraph 3 but are dealt with specifically under this provision.³⁹ 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 origin⁴⁰ and obtaining the residence and work permits at the same time and through a single application.⁴¹ It also implies that the documents required (residence/work permits) will be delivered within a reasonable time.⁴²

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.⁴³

The formalities for obtaining a work permit by a foreign worker remain complex and therefore the situation may raise problems of conformity under the Charter. Romania could accept Article 18§2 provided that the formalities for obtaining a work permit are simplified.

Article 19 The right of migrant workers and their families to protection and assistance

Article 19§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;

Situation in Romania

The Romanian legislation makes reference to the aid and information services provided to migrant workers who wish to immigrate in Romania. The foreigners have access to all necessary information to obtain the work permits, which is available online. Romanian diplomatic missions and consular offices abroad can also provide relevant information to the migrants. Information campaigns regarding admission and residence in Romania are organised in the framework of the National Strategy on Immigration.

Information campaigns on the human trafficking phenomenon and the risks faced by its victims are organised by the National Agency against Human Trafficking in cooperation with interested institutions, and other non-governmental organisations, international organisations and civil society representatives, engaged in the prevention of human trafficking, the protection and assistance of its victims. Police forces undertake courses in protecting human rights of vulnerable groups during their initial training, and further courses have been organised on countering human trafficking.

Opinion of the European Committee of Social Rights

This provision guarantees the right to free information and assistance to nationals wishing to emigrate and to nationals of other States Parties who wish to immigrate⁴⁴. Information

³⁹ Conclusions IX-1, United Kingdom, p. 102.

⁴⁰ Conclusions XVII-2, Finland, p. 243.

⁴¹ Conclusions XVII-2, Germany, pp. 285-286.

⁴² Conclusions XVII-2, Portugal, pp. 702-703.

⁴³ Conclusions XVII-2, Portugal, p. 703.

should be reliable and objective and cover issues such as formalities to be completed and the living and working conditions they may expect in the country of destination (such as vocational guidance and training, social security, trade union membership, housing, social services, education and health).⁴⁵

States must take measures to prevent 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 migrants seeking to enter.⁴⁶

In view of the current legal framework and measures taken by the authorities in order to ensure the access to accurate information of migrant workers, this provision could be immediately accepted by Romania. The Committee encourages the Government to ensure that there are monitoring bodies to guarantee that misleading propaganda is prevented.

Article 19§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;

Situation in Romania

The report indicates that refugees or persons accorded subsidiary protection have the right, on demand, to assistance in voluntary repatriation.

Moreover, European citizens and persons insured in countries with which Romania has concluded international agreements can benefit from medical services and other assistance.

The right to unemployment insurance is guaranteed without discrimination on grounds of nationality, and foreign citizens and stateless persons who were employed in Romania may benefit from this assistance.

Persons entitled to long-term stay are able to avail themselves of medical services.

Opinion of the European Committee of Social Rights

This provision obliges States to adopt special measures for the benefit of migrant workers, beyond those which are provided for nationals to facilitate their departure, journey and reception.⁴⁷

Reception must include not only assistance with regard to placement and integration in the workplace, but also assistance in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures.⁴⁸

In view of the case law and the current legal framework, this provision could be immediately accepted by Romania. The Committee suggests that data collection mechanisms be improved to facilitate evaluation of the results of the measures taken.

⁴⁴ Conclusions I (1969), Statement of Interpretation on Article 19§1

⁴⁵ Conclusions III (1973), Cyprus

⁴⁶ Conclusions XIV-1 (1998), Greece

⁴⁷ Conclusions III (1973), Cyprus

⁴⁸ Conclusions IV (1975), Germany

Article 19§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.

Situation in Romania

One of the objectives of the National Strategy for Immigration of 2011 – 2014 is to strengthen the cooperation between the Romanian institutions with similar institutions of the Member States of the European Union and third countries, particularly of those countries which represent a high migratory potential for Romania. Under the National Strategy for Immigration 2011 - 2014 the development of cooperation with the diplomatic missions of the concerned countries and their central authorities is promoted.

In performing its duties, the General Inspectorate of Immigration cooperates with structures in the Ministry of Internal Affairs and other institutions of the State, with non-governmental organisations and with the foreign citizens who are active in the field of migration and humanitarian protection. It also concludes agreements with similar institutions abroad, and with international organisations.

Opinion of the European Committee of Social Rights

The scope of this provision extends to migrant workers immigrating as well as migrant workers emigrating to the territory of any other State. Contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries, with a view to facilitating the life of emigrants and their families, their adjustment to the new environment and their relations with members of their families who remain in their country of origin.⁴⁹ Formal arrangements are not necessary, the provision of practical co-operation on a needs basis may be sufficient.

In the light of the case law and the current legal situation and practice, the Committee considers that this provision could be immediately accepted by Romania.

Article 19§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.

Situation in Romania

a) Employment conditions

Employees have the right to social protection measures, that guarantee the health and safety of the employees, working conditions for women and young people, establish a minimum gross salary, weekly rest, paid annual leave and opportunities for vocational

⁴⁹ Conclusions XIV-1 (1998), Belgium

training. It is an offence punishable by a fine to employ workers for less than the minimum wage.

The Labour Code states that foreign citizens and stateless persons who work for a Romanian employer shall enjoy the same protection as Romanian citizens without discrimination.

Contracts of employment with migrants must not violate the provisions of the collective work contract, and remuneration may not be below the minimum level established by normative acts or by collective agreements.

Detached workers who provide services on Romanian territory are entitled to the working conditions laid down by Romanian law and/or in the national and branch level collective agreements.

b) Membership of trade unions

The Constitution guarantees freedom of association. The Law on Social Dialogue provides that any employed person has the right to form a trade union without any restriction or prior approval. Persons with long stay permits enjoy equal treatment regarding freedom of association and affiliation with a trade union.

c) Accommodation

Ordinance No. 44/2004 is intended to facilitate the social integration of the foreigners who obtained a form of protection in Romania by ensuring the access, among other rights, to a job, a home, to medical and social assistance, social insurances, to education and by carrying out activities of cultural accommodation, counselling and learning the Romanian language through integration programs. Foreigners who obtained a form of protection in Romania have the access to assistance in acquiring a house, under the same conditions as Romanian citizens.

Opinion of the European Committee of Social Rights

This provision guarantees the right of migrant workers to a treatment not less favourable than that of the nationals in the areas of: (a) remuneration and other employment and working conditions, (b) trade union membership and the enjoyment of benefits of collective bargaining, and (c) accommodation.

States are required to guarantee certain minimum standards in these areas with a view to assisting and improving the legal, social and material position of migrant workers and their families.

States are obliged to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service/ vocational training and promotion.⁵⁰

The right to membership of a trade union includes the right to be founding member and access to administrative and managerial posts in trade unions.⁵¹ This protection also applies to workers who provide services within the host state but are contracted by an employer in another state.⁵²

There must be no legal or *de facto* restrictions on access to public or private accommodation including home-buying,⁵³ access to subsidised housing or housing aids, such as loans or other allowances.⁵⁴

⁵⁰ Conclusions VII (1981), United-Kingdom

⁵¹ Conclusions 2011, Statement of interpretation on Article 19§4b

⁵² Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on admissibility and the merits of 3 July 2013, §§ 140-142.

⁵³ Conclusions IV (1975), Norway

⁵⁴ Conclusions III (1973), Italy

The Committee notes that Romanian law provides guarantees of equal treatment in working conditions and pay; the ability to form and participate in trade union activity and to enjoy the benefits of collective bargaining; and the right to access accommodation without discrimination.

In the light of the case law and the current legal situation and practice, the Committee considers that this provision could be immediately accepted by Romania. Information on the implementation of the legal framework in practice, in particular on the monitoring system and any judicial remedies available to migrant workers, would be essential in assessing the situation under the Charter.

Article 19§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.

Situation in Romania

There is no difference, provided in the law, between Romanian citizens and foreign citizens regarding the payment of social insurance contributions.

The holders of a permanent stay permit benefit, under the law, from equal treatment with Romanian citizens regarding personal income deductions and exemptions.

Opinion of the European Committee of Social Rights

This provision recognises the right of migrant workers to equal treatment in law and in practice in respect of the payment of employment taxes, dues or contributions.⁵⁵

In the light of the current legal situation, the Committee considers that this provision could be immediately accepted.

Article 19§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.

Situation in Romania

In Romania, family reunification represents the entry and the residence on the territory of Romania of the family members of a foreigner with legal residence in Romania in order to preserve the family unit, regardless the date of the establishment of this family relationship.

Family reunification can be obtained by a citizen outside the European Union or the European Economic Area only if that person is a holder of temporary residence permit valid for a year, of an EU blue card, of a long-term residence permit or if they are a beneficiary of refugee status or subsidiary protection.

The applicant may request the family reunification of a spouse, unmarried minor children of either spouse, including adopted children and those who are dependents of either spouse.

⁵⁵ Conclusions XIX-4 (2011), Greece

The right of temporary residence may be extended individually, for each family member, on the same period for which the right of stay was granted to the sponsor. For the husband/wife of a holder of a right to long-term residence, the right of temporary residence may be extended for periods up to 5 years.

Applicants must prove that they “possess means of subsistence, apart from those necessary for his own subsistence according to the law, to an amount corresponding to the minimum net wage at national level for each family member”. The applicant must also be able to provide accommodation considered to be normal for an equivalent Romanian family.

Opinion of the European Committee of Social Rights

This provision obliges States to allow the families of migrants legally established in their territory to join them. The worker’s children entitled to family reunion are those who are dependent and unmarried, and who fall under the legal age-limit in the receiving state (under the Charter the age limit for admission under family reunion is set at the age of majority, which in most countries is 18 years).

The Committee considers that certain conditions excessively inhibit family reunion and are therefore violations of the Charter, these include: refusal on health grounds except where the condition is a threat to public health⁵⁶, order or security⁵⁷; a requirement that the migrant has been resident for more than one year⁵⁸; a requirement that the family have sufficient accommodation which is too restrictive⁵⁹; a requirement that the family have sufficient means which is too restrictive⁶⁰; or language tests which must be passed in order to be allowed to join the family in the State.

In light of the case law and the current legal situation, the Committee considers that Article 19§6 could be accepted by Romania provided that further information on refusals on health grounds and on the requirement of sufficient financial means to support each family member and the length in provided.

Article 19§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.

Situation in Romania

The report does not provide updated information relevant to this article.

Opinion of the European Committee of Social Rights

This provision obliges States not to place excessive restrictions on the right of migrants to transfer earnings and savings, either during their stay or when they leave their host country.⁶¹

Migrants must be allowed to transfer money to their own country or any other country. The right to transfer earnings and savings includes the right to transfer moveable property.⁶²

⁵⁶ Conclusions XVI-1 (2002), Greece

⁵⁷ Conclusions XV-1 (2000), Finland

⁵⁸ Conclusion 2011, Statement of interpretation on Article 19§6

⁵⁹ Conclusions IV (1975), Norway

⁶⁰ Conclusions 2011, Statement of interpretation on Article 19§6

⁶¹ Conclusions XIII-1 (1993), Greece

⁶² Conclusions 2011, Statement of Interpretation of Article 19§9

In the previous report, the Committee was of the opinion that, in the light of the case law and the legal situation and practice, this provision could be accepted by Romania. As the situation has not undergone substantial changes since then, the Committee reiterates its opinion and invites Romania to consider acceptance of Article 19§9.

Article 19§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.

Situation in Romania

The report does not provide updated information relevant to this article.

Opinion of the European Committee of Social Rights

Under this provision, States must ensure that the rights provided for in paragraphs 1 to 9, 11 and 12 are extended to self-employed migrant workers and their families.⁶³

States must ensure that there is no unjustified treatment which amounts to discrimination, in law or in practice between wage-earners and self-employed migrants. A finding of non-conformity under paragraphs 1 to 9, 11 and/or 12 of Article 19 may lead to a finding of non-conformity under paragraph 10.

The report does not provide enough information for the Committee to assess the situation. The Committee notes that foreign migrants can be granted visas and residence permits on the basis of economic activity, and thereafter enjoy the same rights as other migrants.⁶⁴ The Committee invites Romania to continue considering the acceptance of Article 19§10.

Article 19§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.

Situation in Romania

The report mentions integration programmes, which include language classes and cultural education offered by the Ministry of Education. The Committee notes that information available on the website of the General Inspectorate for Immigration states that such classes are available upon request to migrants granted a right of stay in Romania, and to EU and EEA nationals.

Opinion of the European Committee of Social Rights

Under this provision, States should promote and facilitate the teaching of the national language to children of school age, as well as to the migrants themselves and to members of their families who are no longer of school age.⁶⁵ The teaching of the national language of the

⁶³ Conclusions I (1969), Norway

⁶⁴ Emergency Ordinance No. 194 of 12 December 2002

http://igi.mai.gov.ro/api/media/userfilesfile/Legislatie/Legislatie%20nationala/OUG_194_2002_2007_EN.pdf

⁶⁵ Conclusions 2002, France

receiving state is the main means by which migrants and their families can integrate into society.

A requirement to pay substantial fees is not in conformity with the Charter. States are required to provide national language classes free of charge, otherwise for many migrants such classes would not be accessible.⁶⁶

Attending school where teaching occurs in the national language is not sufficient to satisfy the obligations under 19§11. States must make special effort to set up additional assistance for children of immigrants, particularly those who have not attended primary school right from the beginning and who therefore lag behind their fellow students.

The report does not provide enough information for the Committee to assess the situation. The Committee considers that the existence of integration programmes including access to language and cultural education activities indicates a positive development. The Committee invites Romania to consider acceptance of Article 19§11.

Article 19§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.

Situation in Romania

The report does not provide updated information relevant to this article.

Opinion of the European Committee of Social Rights

Article 19§12 requires states to promote and facilitate the teaching of the migrant worker's mother tongue to the children of the migrant worker. States should promote and facilitate the teaching of the languages most represented among the migrants present on their territories within their school systems or in other contexts such as voluntary associations or non-governmental organisations.⁶⁷

The report does not provide enough information for the Committee to assess the situation. The Committee invites Romania to continue considering the acceptance of Article 19§12.

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

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;

⁶⁶ Conclusions 2011, Norway

⁶⁷ Conclusions 2011, Statement of interpretation on Article 19§12

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

Situation in Romania

Regarding Article 22 a), the report indicates that in accordance with the Romanian legislation, the right to take part in the determination and improvement of the working conditions and working environment is exercised through trade unions (within the collective negotiation which is mandatory in undertakings with more than 21 employees) or through the employees' representatives in case of undertakings with more than 20 employees and with no trade union.

In relation to Article 22 b), the report indicates that when developing health and safety measures, the employer shall consult the trade union or, as the case may be, the representatives of the employees, and the health and safety committee. A health and safety committee shall be established with each employer, with a view to ensuring the involvement of the employees in the preparation and implementation of the decisions in the field of health and safety. The health and safety committee shall be established with the public, private and co-operative legal persons, including foreign-owned legal persons operating in Romania, with at least 50 workers. Should the working conditions be difficult, unhealthy or dangerous, the labour inspector may request the establishment of such committees also for the employers with less than 50 employees.

As to the organisation of social and socio-cultural services and facilities within the undertaking (Article 22 c), the report indicates that legislation provides the possibility of the employer to offer to its employees certain social and socio-cultural facilities, namely, childcare vouchers and gift vouchers, holiday vouchers and meal vouchers. Through the collective agreement the parties can establish other facilities, such as: various aids for child birth, marriage, death; bonuses at various religious holidays etc. When socio-cultural facilities are organised by the employer within the company, these facilities (sports grounds, libraries etc.) are considered to be workplaces according to the provisions of the national legislation on health and safety at work.

Opinion of the European Committee of Social Rights

This provision applies to all undertakings, whether private or public. 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 practice⁶⁸ and tendency undertakings.

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 matters referred to in this provision, such as: (i) the determination and improvement of the working conditions, work organisation and working environment; (ii) the protection of health and safety within the undertaking. The right of workers' representatives to consultation at the enterprise level in matters of health and safety at the workplace is equally dealt with by Article 3 (right to safe and healthy working conditions, see *supra*). For the States who have accepted Articles 3 and 22, this issue is examined only under Article 22; (iii) the organisation of social and socio-cultural services within the undertaking. 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 already been established. Article 22 of the Charter does not require that employers offer social and socio-cultural services and facilities to their employees but requires that workers may participate in their organisation, where such services and facilities have been established.⁶⁹

⁶⁸ Conclusions 2005, Estonia

⁶⁹ Conclusions 2007, Armenia

Workers must have legal remedies when these rights are not respected.⁷⁰ There must also be sanctions for employers which fail to fulfil their obligations under this Article.⁷¹

Considering the case law and the current legal framework and practice in Romania, this provision could be accepted. Information related to the legal remedies available to workers would be of importance in assessing the conformity of the situation with the requirements of the Charter.

Article 23 The right of elderly persons to social protection

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 organisations, 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;
- 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;
- to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in their institution.

Situation in Romania

Under Law No. 292/2011 on Social Assistance, the elderly persons benefit of social assistance measures in addition to their social insurances (pensions) to cover the risks of old age and health. The report indicates that the elderly persons who have no incomes or whose incomes are situated below a certain threshold established by law, have the right to social assistance benefits and facilities, such as: welfare, emergency aid, heating aid, financial aid, facilities for the urban and interurban transport, telephone, radio-TV, food supplies at a lower price, supported by the local budgets; or spa treatment vouchers or for the recreation of the seniors, supported by the budget of the National House of Social Insurances; benefits in kind such as: food, footwear, clothing, medicines and medical devices, construction materials and others, supported by the local budgets.

According to the report, when taking decision related to the development of social services for the elderly persons, the central or local public authorities have the obligation to consult the representative bodies of the elderly persons. Moreover, when granting social services, the public and private providers of social services shall involve the elderly person, his family or his legal representative, and shall promote the intervention of the community members and volunteers.

The report underlines that the authorities of the local public administration have the responsibility to identify and assess the needs of the elderly persons, to organize, plan and

⁷⁰ Conclusions 2003, Bulgaria

⁷¹ Conclusions 2003, Slovenia

ensure the financing or co-financing of the social services. The public or private social service providers have the responsibility of providing them in compliance with the quality standards.

According to the report, the elderly persons may benefit of the following social services: (i) residential care regime, namely homes for the elderly, medical-social units, protected shelters, financed from the state budget and the contributions of the beneficiaries and/or their families; (ii) home care services, financed from the local budgets and the contributions of the beneficiaries if their incomes are higher than a certain threshold set by the law; (iii) assistance and support services for the elderly persons granted in the community, namely day centres of care and rehabilitation, club day centres, day centres to promote volunteering among seniors; (iv) counselling and information services granted for free by the authorities of the local public administration.

The report adds that since 2005, the providers of social services are under the obligation to comply with the quality standards which ensure, in the residential centres, a safe living environment adapted to the needs and rights of the beneficiaries to privacy, dignity, and free speech.

The report provides information on pensions stating that the value of the pension point increased since 2009 and it was established at RON 762.1 in 2013.

Opinion of the European Committee of Social Rights

The primary focus of the right to adequate resources 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.

Although Article 23§1b only refers to the provision of information about services and facilities, 1§b of Article 23 presupposes the existence of services and facilities and that elderly persons have the right to certain services and facilities. Therefore, not only information relating to the provision of information about these services and facilities is examined but also the services and facilities themselves. In particular, information is required 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.⁷² Additionally States must have a system for monitoring the quality of services and a procedure for complaining about the standard of services.⁷³

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. 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.⁷⁴

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 together with guidelines on healthcare for elderly persons. In addition, there should be mental health programmes for any psychological problems in respect of the elderly, and adequate palliative care services.⁷⁵

The final part of Article 23 deals with the rights of elderly persons living in institutions. In this context, it provides that the following rights must be guaranteed; the right to appropriate care and adequate services, the right to privacy, the right to personal dignity, the right to

⁷² Conclusions 2003, France (Article 23)

⁷³ Conclusions 2009 Andorra (Article 23)

⁷⁴ Conclusions 2005, Slovenia, Conclusions 2013, Andorra (Article 23)

⁷⁵ Conclusions 2003, France, (Article 23)

participate in decisions concerning the living conditions in the institution, the protection of property, the right to maintain personal contact with persons close to the elderly person and the right to complain about treatment and care in institutions.⁷⁶

In the light of the case law and the current legal framework, Article 23 could be accepted by Romania. The situation in practice would be of importance in order to assess the extent to which the effective exercise of the right of elderly persons to social protection is ensured. The Committee invites the Government to ensure that there is a system for monitoring the quality of services provided to the elderly persons and a procedure for complaining about the standard of services or about the treatment and care in institutions.

Article 26 The right to dignity at work

Article 26§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;

Situation in Romania

Law No. 202/2002 on Equal Opportunities and Government Ordinance No. 137/2000 on the Prevention and Sanctioning of All Forms of Discrimination contain relevant provisions with regard to harassment. A specific definition of sexual harassment is provided by Law on Equal Opportunities in Article 4(d) as 'any undesirable sex-related behaviour expressed in a verbal, nonverbal or physical manner with the purpose or effect of negatively affecting the dignity of a person and to create a degrading, intimidating, hostile, humiliating or offensive environment'.

The Law on Equal Opportunities in Article 4(g) provides that 'sex-based discrimination shall be understood as direct and indirect discrimination, harassment and sexual harassment of a person by another person, at the workplace or in any other place where that person performs activities'. The Criminal Code includes sexual harassment as a criminal offence. Article 203¹ defines sexual harassment only with regard to the existence of a relation of subordination between the perpetrator and the victim in the area of employment. The action of harassing a person using threats, with the purpose of obtaining sexual advantages, by a person that abuses his/her authority or influence at the workplace shall be punished by imprisonment of 3 months to 2 years, or a fine.

In the event of an alleged act of discrimination, the victim of discrimination or any person interested can choose between filing a complaint with the National Council for Combating Discrimination (NCCD), and/or filing a civil complaint for civil damages with a court of law, unless the act is criminal and in such a case the Criminal Code provisions apply.

The Law on Equal Opportunities provides for a specific complaints procedure applicable to sex-based discrimination. Employees are entitled, when they consider themselves to be gender based discriminated, to file intimations or complaints to the employer or against it, if it is directly involved, and to request the support of the trade union or the employees' representatives in the company to settle their situation at the workplace. If this intimation/complaint was not settled at company level through mediation, the employee submitting factual elements that determine the assumption of a direct or indirect gender-based discrimination in the field of labour, based on the provisions of this law, is entitled to send the intimation/complaint both to the Agency and to file a complaint to the competent court of law, at sections specialized in labour conflicts and litigation or social insurance within

⁷⁶ Conclusions 2003, Slovenia

the range in which the employer or the perpetrator run their activity or, as the case may be, at the court of administrative disputed claims, but not later than 3 years since the deed.

As regards compensation, the court can order the guilty party to pay damages to the person who considers him/herself to be discriminated against based on gender, to an amount reflecting the suffered prejudice. The amount of damages will be set by the court according to applicable law. The employer reintegrating in the company or at the workplace a person on the basis of a definitive court decision, is obliged to pay any remuneration lost due the unilateral modification of the labour conditions or labour relations, as well as all contributions to the state budget and to the state social insurance budget due by both employer and employee. If the reintegration in the company or at the workplace is not possible for the person regarding whom the court decided that the labour conditions or labour relations were unilaterally modified, the employer shall pay to the employee damages equal to the real prejudice suffered by the employee. The amount of damages will be determined by the court according to applicable law.

Opinion of the European Committee of Social Rights

Article 26§1 requires States parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat sexual harassment. In particular, in consultation with social partners⁷⁷, they should inform workers about the nature and behaviour in question and the available remedies⁷⁸.

In order to allow an effective protection of victims, procedures require, to a certain extent, 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.⁷⁹

Victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage.⁸⁰ These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer.⁸¹

In addition, the right to reinstatement should be guaranteed to employees who have been unfairly dismissed or have been pushed to resign for reasons related to sexual harassment.⁸²

The Committee considers that the current national legal framework on equal opportunities makes possible the immediate acceptance of Article 26§1 of the Charter. Information would have to be provided on the implementation of the legislation in practice, in particular on the case law of the courts and the National Council for Combating Discrimination with regard to sexual harassment in the workplace or in relation to work.

Article 26§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.

⁷⁷ Conclusions 2005, Lithuania

⁷⁸ Conclusions 2003, Italy

⁷⁹ Conclusions 2007, Statement of Interpretation on Article 26

⁸⁰ Conclusions 2005, Moldova.

⁸¹ Conclusions 2005, Lithuania.

⁸² Conclusions 2003, Bulgaria

Situation in Romania

According to the report, any person who feels discriminated, including at the workplace, has the right to submit a complaint with the National Council for Combating Discrimination (NCCD). As regards the burden of proof, Law No. 61/2013 which amended Government Ordinance No. 137/2000, established a relative presumption in favour of the person who complains of an alleged act of direct or indirect discrimination. Thus, in the procedure that takes place before the court or before the NCCD, “the person against whom the complaint was made has the burden to prove that there has not been a violation of the principle of equal treatment”.

Opinion of the European Committee of Social Rights

States Parties are required to take all necessary preventive and compensatory measures to protect individual workers against recurrent reprehensible or distinctly negative and offensive actions directed against them at the workplace or in relation to their work, since these acts constitute humiliating behaviour.⁸³ As far as awareness raising is concerned, the requirements are the same as under Article 26§1⁸⁴: States Parties are required to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat moral harassment. In particular, in consultation with social partners, they should inform workers about the nature and behaviour in question and the available remedies.

Workers must be afforded effective protection against harassment. This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be retaliated against for upholding these rights.⁸⁵ Victims of harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim’s pecuniary and non-pecuniary damage and act as a deterrent to the employer.⁸⁶

In the light of the case law and the current legal framework, the Committee considers that Article 26§2 could be accepted by Romania. The Committee invites the Government to ensure that preventive measures to combat moral harassment (information, awareness-raising and prevention campaigns in the workplace or in relation to work) exist.

Article 27 The right of workers with family responsibilities to equal opportunities and equal treatment

Article 27§1 With a view to ensuring the effective 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;

⁸³ Conclusions 2003, Bulgaria

⁸⁴ Conclusions 2003, Slovenia

⁸⁵ Conclusions 2007, Statement of Interpretation on Article 26

⁸⁶ Conclusions 2007, Slovenia

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

Situation in Romania

The legislation provides the possibility for women who have resumed their activity as a result of the termination of the maternity leave for raising the child until the age of 2 years, respectively 3 years in the case of a child with disability, to benefit, at their request, of free vocational training services. The approval of the employer is needed.

The report indicates that the employment conditions for workers with family responsibilities which may refer to time/schedule, working conditions, and other facilities, are established at the employer's level through the collective agreement, the internal regulation where appropriate, and through the individual labour contracts.

The Labour Code provides the possibility of the person employed with part time labour contract to benefit of the rights of the full-time employees, under the conditions provided by the law and the applicable collective labour contracts. The employer shall take into consideration, as much as possible, the requests of the employees to transfer either from a full-time job to a part-time job, either from a part-time job to a full-time job or to increase their working hours, if the opportunity arises.

Opinion of the European Committee of Social Rights

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. Measures need to be taken concerning the length and organisation of working time. Furthermore, workers with family responsibilities should be allowed to work part-time or to return to full-time employment.⁸⁷
- c. to develop or promote services, public or private, in particular child day care services and other childcare arrangements. Where a State has accepted Article 16, childcare arrangements are dealt with 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.⁸⁸

In the light of the case law and the legal situation and practice, the Committee considers that there are no obstacles to the immediate acceptance of Article 27§1.

Article 27§3 With a view to ensuring the effective 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.

Situation in Romania

⁸⁷ Conclusions 2005, Statement of Interpretation on Article 27§1b; see for example Estonia.

⁸⁸ Conclusions 2005, Italy.

According to the report, the Labour Code prohibits any direct or indirect discrimination towards an employee, based on criteria such as sex, sexual orientation, genetic characteristics, age, national origin, race, colour of the skin, ethnic origin, religion, political options, social origin, disability, family conditions or responsibilities, union membership or activity.

The Labour Code also prohibits the termination of employment on reasons related on family conditions and social responsibilities and provides that the employees who are dismissed on these grounds may receive compensation according to the law and the applicable collective agreement.

Opinion of the European Committee of Social Rights

Family responsibilities must not constitute a valid ground for termination of employment. Workers dismissed on such illegal grounds must be afforded the same level of protection afforded in other cases of discriminatory dismissal under Article 1§2 of the Charter. In particular, courts or other competent bodies should be able to order reinstatement of an employee unlawfully dismissed⁸⁹ and/or to award a level of compensation that is sufficient both to deter the employer and proportionate the damage suffered by the victim.⁹⁰

Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed.

In the light of the case law and the current legal situation and practice, Article 27§3 could be immediately accepted by Romania. Information with regard to the case law of the courts, in particular on the level of compensation granted in such cases, would be of importance in assessing the situation under the Charter.

Article 30 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.

Situation in Romania

The report indicates that a set of social assistance benefits are guaranteed to families with reduced incomes or without incomes, for determined periods or in specific situations (according to Law No. 292/2011 on social assistance and other special laws), such as welfare benefits, communitarian social aids, child allowances, allowances for children who are temporary or permanently deprived of parental care, social scholarships and financial aids to facilitate the access to education, emergency aids, allowances for children with disabilities.

The report indicates that the National strategy for promoting social inclusion and combating poverty 2014-2020 is developed with the support of the World Bank.

Opinion of the European Committee of Social Rights

⁸⁹ Conclusions 2007, Finland.

⁹⁰ Conclusions 2005, Estonia.

Article 30 requires States Parties to adopt an overall and coordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access fundamental social rights. There should also exist monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion.⁹¹ The measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned.⁹² In this respect the definitions and measuring methodologies applied at the national level and the main data made available are systematically reviewed. The at-risk-of-poverty rate before and after social transfers (Eurostat), is used as a comparative value to assess national situations.

The Committee notes from the information provided in the report that some benefits are guaranteed to families with reduced incomes or without incomes, for determined periods or in specific situations, for fighting against poverty. The Committee encourages the authorities to develop a global and coordinated approach and to take further measures to guarantee protection against poverty and social exclusion. The Committee suggests that monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion should be developed.

The situation as described above may raise problems of conformity under the Charter and thus, further analysis of the legislation and practice is needed. The Committee invites Romania to continue considering the acceptance of this provision in the near future.

Article 31 The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

Article 31§1

- to promote access to housing of an adequate standard

Situation in Romania

In Romania, Law No. 114/1996 defines the social housing as the housing which is granted with subsidy rent to people or families, whose economic situation does not allow them the access to housing or renting a house under the conditions of the market. The following categories of people may benefit of social housing in the order or priority set by the law: people and families evicted or to be evicted from properties returned to the owners; young people aged under 35 years; young people from the social protection institutions who have reached the age of 18 years; persons with disabilities, seniors, war veterans and war widows.

The object of Law No. 116/2002 on the Prevention and Combating Social Exclusion is to guarantee the effective access, especially for young people, to elementary and fundamental rights, such as: the right to employment, to housing, health care, education. The same law provides that in order to facilitate the access to housing for persons aged under 35 years, who are unable to purchase a home with their own means, the local councils shall fully cover the estimated value of the advance to be paid for the acquisition of a housing (build a new housing or purchase a housing from the free market) or the rent for a period of up to 3 years for a rented housing. The ones benefiting of these facilities are the young people from the orphanages, family people aged up to 35 years, with or without dependent children, and other categories of persons provided by the law.

Opinion of the European Committee of Social Rights

⁹¹ Conclusions 2003, France.

⁹² Conclusions 2003, France.

States must guarantee to everyone the right to adequate housing.⁹³ They should promote access to housing in particular to the different groups of vulnerable persons, such as low-income persons, unemployed persons, single parent households, young persons, persons with disabilities including those with mental health problems.⁹⁴

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 limit against the interruption of essential services such as water, electricity and telephone.⁹⁵

The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers must have access to affordable and impartial legal and non-legal remedies.⁹⁶ Any appeal procedure must be effective.⁹⁷

The situation as described above may raise problems of conformity with the Charter and no information with regard to the implementation of the legislation is provided in the report. However, the Committee is of the opinion that Romania could accept this provision provided that further measures are taken - legislative reforms, global and coordinated policies on housing, monitoring mechanisms and access to remedies for right holders - for the effective exercise of the right to housing.

Article 31§2

- to prevent and reduce homelessness with a view to its gradual elimination;

Situation in Romania

The report does not provide information relevant to this article.

Opinion of the European Committee of Social Rights

States must take action to prevent categories of vulnerable people from becoming homeless. In addition to a housing policy for all disadvantaged groups of people to ensure access to social housing (cf. Article 31§3),⁹⁸

Forced eviction can be defined as the deprivation of housing which a person occupied due to insolvency or wrongful occupation.⁹⁹ States must set up procedures to limit the risk of eviction. The eviction should be governed by rules of procedure sufficiently protective of the rights of the persons concerned and should be carried out according to these rules.¹⁰⁰ Legal protection for persons threatened by eviction must include, in particular, an obligation to consult the parties affected in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction.

When evictions do take place, they must be carried out under conditions which respect the dignity of the persons concerned. The law must prohibit evictions carried out at night or during the winter period. When an eviction is justified by the public interest, authorities must

⁹³ Conclusions 2003, France.

⁹⁴ Conclusions 2003, Italy.

⁹⁵ Conclusions 2003, France, p. 224.

⁹⁶ Conclusions 2003, France, p. 224.

⁹⁷ European Federation of National Organisations Working with the Homeless (FEANTSA) c. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 80-81.

⁹⁸ Conclusions 2005, Lithuania, p. 409.

⁹⁹ Conclusions 2003, Sweden, p. 655.

¹⁰⁰ European Roma Rights Center (ERRC) v. Greece, Complaint No. 15/2003, Decision on the merits of 8 December 2004, §51.

adopt measures to re-house or financially assist the persons concerned.¹⁰¹ Domestic law must provide legal remedies and offer legal aid to those who are in need of seeking redress from the courts. Compensation for illegal evictions must also be provided.

States should foresee sufficient places in emergency shelters¹⁰² and the conditions in the shelters should be such as to enable living in keeping with human dignity¹⁰³.

It is not possible to assess if this provision could be accepted by Romania due to the lack of information on this point. The Committee encourages the authorities to provide information on this aspect and to continue considering the acceptance of Article 31§2 in the near future.

Article 31§3

- to make the price of housing accessible to those without adequate resources.

Situation in Romania

The report indicates that Law No. 114/1996 on Housing defines the social housing as the housing which is granted with subsidy rent to people or families, whose economic situation does not allow them to have access to housing or renting a house under the conditions of the market. Families and persons with an average monthly net income, realised in the last 12 months, under the level of the monthly average net income, have access to a social housing or rental according to this law.

Opinion of the European Committee of Social Rights

An adequate supply of affordable housing must be ensured for persons with limited resources.

Housing is affordable if the household can afford to pay initial costs (deposit, advance rent), current rent and/or other housing-related costs (e.g. utility, maintenance and management charges) on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located.¹⁰⁴

States must:

- adopt appropriate measures for the provision of housing, in particular social housing;¹⁰⁵ social housing should target, in particular, the most disadvantaged;¹⁰⁶
- adopt measures to ensure that waiting periods for the allocation of housing are not excessive; legal and non-legal remedies must be available when waiting periods are excessive;¹⁰⁷
- introduce housing benefits at least for low-income and disadvantaged sections of the population.¹⁰⁸ Housing benefit is an individual right: all qualifying households must

¹⁰¹ European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31/2005, Decision on the merits of 18 October 2006, §52.

¹⁰² European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, § 107.

¹⁰³ European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 108-109.

¹⁰⁴ Conclusions 2003, Sweden, p. 655.

¹⁰⁵ Conclusions 2003, Sweden, p. 656.

¹⁰⁶ International Movement ATD Fourth World v. France, complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 98-100.

¹⁰⁷ International Movement ATD Fourth World v. France, complaint No. 33/2006, decision on the merits of 5 December 2007, § 131.

¹⁰⁸ Conclusions 2003, Sweden, p. 656.

receive it in practice; legal remedies must be available in case of refusal.¹⁰⁹ All the rights thus provided must be guaranteed without discrimination, in particular as in respect of Roma or travellers.¹¹⁰

It is not possible to assess if this provision could be accepted by Romania due to the lack of information on the situation in practice as well as on the monitoring mechanisms and legal remedies available in case of refusal to grant housing benefits. The Committee encourages the authorities to provide information on these aspects and to continue considering the acceptance of Article 31§2 in the near future.

Concluding Remarks

In view of the conclusions of this report, the Committee wishes to encourage Romania to consider accepting additional provisions of the Charter as soon as possible so as to consolidate the paramount role of the Charter in guaranteeing and promoting social rights.

The next examination of the provisions not accepted by Romania will take place in 2019.

The Committee would also like to encourage Romania to consider accepting the Additional Protocol providing for a system of collective complaints. The procedure of collective complaints, which allows participation by the social partners and civil society in the monitoring of application of the Charter, represents a transparent, open and democratic monitoring system. The acceptance of Additional Protocol providing for a system of collective complaints would be an opportunity for Romania to engage with its citizens and to improve their standard of living on the basis of the Charter.

¹⁰⁹ Conclusions 2005, Sweden, p. 734.

¹¹⁰ International Movement ATD Fourth World v. France, complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 149-155.

APPENDIX I

— Romania and the European Social Charter —

Ratifications

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

Romania has not ratified the Additional Protocol providing for a system of collective complaints.

Table of accepted provisions

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										
								Grey = Accepted provisions			

The Charter in domestic law

Automatic standing incorporation based on the Constitution, Article 11: "1. The Romanian State pledges to fulfil as such and in good faith its obligations as deriving from the treaties it is a party to. 2. Treaties ratified by Parliament, according to the law, are part of national law. 3. If a treaty Romania is to become a party to, contains provisions contrary to the Constitution, its ratification shall only take place after the revision of the Constitution".

Reports*

Between 2001 and 2014, Romania submitted 13 reports on the application of the Revised Charter.

The 13th report, submitted on 25/11/2013, covers the accepted provisions relating to Thematic Group 3 "Labour rights" (Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29). The conclusions in respect of these provisions were published in January 2015.

The 14th report, which should have been submitted by 31 October 2014, should concern the accepted provisions related to Thematic Group 4 "Children, families, migrants" namely:

- The right of children and young persons to protection (Article 7)
- The right of employed women to protection (Article 8)
- The right of the family to social, legal and economic protection (Article 16)
- The right of children and young persons to social, legal and economic protection (Article 17)
- The right of migrant workers and their families to protection and assistance (Article 19)
- The right of workers with family responsibilities to equal opportunities and equal treatment (Article 27)
- The right to housing (Article 31)

In addition, the report should concern the information required by the European Committee of Social Rights in the framework of Conclusions 2013 (Articles 3,11,12,13, 14, 23 and 30, relating to Thematic group "Health, social security and social protection"), in the event of non-conformity for lack of information.

Conclusions in respect of these provisions will be published in January 2016.

* Following a decision taken by the Committee of Ministers in 2006, the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

Situation of Romania with respect to the application of the Revised European Social Charter

Examples of progress achieved in the implementation of social rights under the European Social Charter ¹

Health

- ▶ Adoption of Law on Safety and Health at Work No. 319/2006 which entered into force on 1 October 2006.
- ▶ Adoption of Law No 95/2006 on the reform in the field of health care.
- ▶ Adoption of Law No. 47 of 16 June 2005 on the national system of social assistance
- ▶ Restrictions on tobacco advertising and sale (Act No. 148/2000);
- ▶ Measures preventing and combating the effects of the tobacco products (Act No. 90/2004).

Children

- ▶ Adoption of a comprehensive framework on the protection and promotion of the rights of the child and setting up of the National Authority for the Protection of the Rights of the Child (Act No. 272/2004 on the Protection of the Rights of the Child).
- ▶ National action plan to eliminate child labour approved by Government decision No. 1769/2004.
- ▶ Prohibition of trafficking of children for any kind of exploitation, including sexual (Act No. 678/2001 on the Prevention and Combat of Trafficking in Human Beings).

Non-discrimination (sex)

- ▶ Prohibition of all forms of discrimination on grounds of sex in access to social security benefits (Act No. 76/2002)
- ▶ Prohibition of all forms of discrimination on grounds of sex in all aspects of working life and right to equal pay for a work of equal value (Act No. 202/2002)

Non-discrimination (employment)

- ▶ Prohibition of all forms of discrimination in employment (Ordinance No. 137/2000 as modified by Act No. 48/2002)
- ▶ The requirement of the Romanian nationality for the representation within the Economic and Social Council was removed (Article 94 of Law No. 62/2011 on Social Dialogue)

Non-discrimination (disability)

- ▶ Exemption of all persons with disabilities working on individual employment contracts from tax on their wages (Governmental Emergency Ordinance No. 102/1999 approved by Act No. 519/2002)
- ▶ Prohibition of discrimination in employment on the grounds of disability (Decree No. 77/2003 and Labour Code as revised)
- ▶ Adoption of an antidiscriminatory legislation to promote an equal and free access to any form of education for people with disabilities (Act No. 448/2006 on the protection and promotion of the rights of people with disabilities).

Right of children and young persons to protection

- ▶ Adoption of measures to prevent and protect children and young persons against domestic violence (Act No. 217/2003).

1 "The [European Committee on Social Rights] rules on the conformity of national situations with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. It adopts conclusions in the framework of the reporting procedure and decisions under the collective complaints procedure (Article 2 of the Rules of the Committee)."

► Section 28 of Act No. 272/2004 on the Protection and Promotion of the Rights of the Child, promulgated through Decree No. 481/2004 (in force in 2005), provides that a child has the right to be shown respect for his or her personality and individuality and may not be made subject to physical punishment or to other humiliating or degrading treatment.

Employment

- Regulation of special types of contracts of employment (temporary agency work, part-time employment, employment on fixed term contracts, home-based work) (Labour Code as revised in 2003).
- All persons employed with an individual labour agreement, the public servants, the public servants with special statute, cooperative members and employed farmers have the right, without any restriction or prior authorisation, to form and/or to join a trade union (Article 3 of Law No. 62/2011 on Social Dialogue).
- Right of female employees to a compulsory 42 days postnatal leave (Article 16 of Government Emergency Ordinance No 96/2003)
- Phasing out of compulsory military service (Act No. 395/2005). Alternative service is supposed to disappear.

Resolution of collective labour disputes

- Law No. 62/1011 on Social Dialogue repealed Law No 168/1999 on Resolution of Labour Dispute which allowed employers to have recourse to compulsory arbitration in circumstances which went beyond those permitted by Article G of the Revised Charter. Article 180 of Law No. 62/2011 provides that mediation or arbitration of a collective labour dispute is mandatory if the parties have mutually agreed so, prior to the strike initiation or during the strike.

Right of workers to the protection of the claims in the event of insolvency of their employer

- Establishment of a guarantee fund to protect employees' wage claims in the event of their employers' insolvency (Act 200/2006).

National minimum wage

- On 25 July 2008, the Romanian government and social partners signed a tripartite agreement on the growth of the gross national minimum wage over the period 2008-2014. The agreement, which is a first in the country's industrial relations, provides for the minimum wage to rise from 31% of the national average wage at present to 50% in 2014.
- The tripartite agreement was not extended after 2010.

Cases of non-conformity

Thematic Group 1 "Employment, training and equal opportunities

► *Article 18§3 – Right to engage in a gainful occupation in the territory of other States Parties – Liberalising regulations*

1. the lack of simplification of formalities for obtaining work and residence permits still represents a serious obstacle for foreign workers to access national labour markets;
2. the loss of employment leads to the cancellation of the residence permit thereby obliging foreign workers to leave the country.

(Conclusions 2012)

► *Article 25 - Right of workers to protection of their claims in the event of the insolvency of their employer*

It has not been established that workers' claims in case of insolvency of the employer are adequately protected in practice.

(Conclusions 2012)

Thematic Group 2 "Health, social security and social protection"

► *Article 3§2 – Right to safe and healthy working conditions – Safety and health regulations*

Domestic workers are not covered by occupational health and safety regulations.

(Conclusions 2013)

► *Article 3§3 – Right to safe and healthy working conditions – Enforcement of safety and health regulations*

Measures to reduce the excessive rate of fatal accidents are inadequate.

(Conclusions 2013)

► *Article 11§1 – Right to protection of health – Removal of the causes of ill-health*

Measures taken to reduce infant and maternal mortality rates have been insufficient.

(Conclusions 2013)

► *Article 11§2 – Right to protection of health – Advisory and educational facilities*

It has not been established that:

- Counselling and screening for pregnant women and children are frequent enough or that the proportion of mother and children covered is sufficient;

- Prevention through screening is used as a contribution to the health of the population.

(Conclusions 2013)

► *Article 12§1 – Right to social security – Existence of social security system*

- The minimum level of unemployment benefit is manifestly inadequate;
- It has not been established that the legislation provides an effective guarantee of protection against unemployment risk;
- It has not been established that the minimum level of sickness benefit is adequate.

(Conclusions 2013)

► *Article 12§4 – Right to social security – Social security of persons moving between states*

- The retention of accrued benefits is not guaranteed to nationals of all other State Parties;
- The right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

(Conclusions 2013)

► *Article 13§1 – Right to social and medical assistance – Adequate assistance for every person in need*

It is not established that the level of social and medical assistance is adequate.

(Conclusions 2013)

► *Article 13§3 – Right to social and medical assistance - Prevention, abolition or alleviation of need*

It has not been established that people without resources or at risk of becoming so have effective access to adequate services offering advice and personal assistance to prevent, remove or to alleviate personal or family want.

(Conclusions 2013)

Thematic Group 3 “Labour rights”

► *Article 4§1 - Right to a fair remuneration - Decent remuneration*

The national minimum wage is not sufficient to ensure a decent standard of living.

(Conclusions 2014)

► *Article 4§4 - Right to a fair remuneration - Reasonable notice of termination of employment*

- The notice period for dismissal for physical or mental incapacity or for professional inadequacy or as a result of the abolition of posts is insufficient;
- The legislation makes no provision for notice periods during probationary periods and in the event of legally automatic termination of employment.

(Conclusions 2014)

► *Article 4§5 - Right to a fair remuneration - Limits to deduction from wages*

After the subtraction of the combined amount of all authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves or their dependants.

(Conclusions 2014)

► *Article 5 - Right to organise*

The right of the non-representative trade unions to exercise key trade union prerogatives is restricted.
(Conclusions 2014)

► *Article 6§4 - Right to bargain collectively - Collective action*

Only representative trade unions may take collective action.
(Conclusions 2014)

► *Article 28 – Right of workers' representatives to protection in the undertaking and facilities to be accorded to them*

The protection granted to workers' representatives is not extended for a reasonable period after the end of their mandate.
(Conclusions 2014)

Thematic Group 4 "Children, families, migrants"

► *Article 7§1 – Right of children and young persons to protection – Prohibition of employment under the age of 15*

- light work is not defined by national legislation or practice;
 - prohibition of employment under the age of 15 is not guaranteed in practice.
- (Conclusions 2011)

► *Article 7§3 – Right of children and young persons to protection – Prohibition of employment of children subject to compulsory education*

The right of children to fully benefit from compulsory education is not guaranteed due to the ineffective application of the legislation.
(Conclusions 2011)

► *Article 7§5 – Right of children and young persons to protection – Fair pay*

The right to young workers and apprentices to a fair wage or other appropriate allowances is not guaranteed in practice due to the ineffective application of the legislation.
(Conclusions 2011)

► *Article 7§6 – Right of children and young persons to protection – Inclusion of time spent on vocational training in the normal working time*

It has not been established that the right to have time spent on vocational training considered to be working time and remunerated as such is guaranteed in practice.
(Conclusions 2011)

► *Article 7§7 – Right of children and young persons to protection – Paid annual holidays*

It has not been established that the right to paid annual leave is guaranteed in practice.
(Conclusions 2011)

► *Article 7§10 – Right of children and young persons to protection – Special protection against physical and moral dangers*

- the simple possession of child pornography is not a criminal offence;
 - it has not been established that measures taken to combat trafficking and sexual exploitation of children are sufficient.
- (Conclusions 2011)

► *Article 16 – Right of the family to social, legal and economic protection*

The living conditions of Roma families in housing are not adequate.
(Conclusions 2011)

The European Committee of Social Rights has been unable to assess compliance with the following provisions and has invited the Romanian Government to provide more information in the next report:

Thematic Group 1 “Employment, training and equal opportunities”

(Report to be submitted before 31 October 2015)

- ▶ Article 1§1 - Conclusions 2012
- ▶ Article 1§2 - Conclusions 2012
- ▶ Article 1§3 - Conclusions 2012
- ▶ Article 1§4 - Conclusions 2012
- ▶ Article 15§1 - Conclusions 2012
- ▶ Article 20 - Conclusions 2012
- ▶ Article 24 - Conclusions 2012

Thematic Group 2 “Health, social security and social protection”

(Report to be submitted before 31 October 2016)

- ▶ Article 12§2 - Conclusions 2013
- ▶ Article 12§3 - Conclusions 2013

Thematic Group 3 “Labour rights”

(Report to be submitted before 31 October 2013)

- ▶ Article 2§2 - Conclusions 2014
- ▶ Article 4§3 - Conclusions 2014
- ▶ Article 6§2 - Conclusions 2014

Thematic Group 4 “Children, families, migrants”

(Report to be submitted before 31 October 2014)

- ▶ Article 7§§4, 8 and 9 - Conclusions 2011
- ▶ Article 8§2 - Conclusions 2011
- ▶ Article 17§1 - Conclusions 2011
- ▶ Article 19§§7 and 8 - Conclusions 2011

APPENDIX II

Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter

(Adopted by the Committee of Ministers on 12 October 2011 at the 1123rd meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

Considering the European Social Charter, opened for signature in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996 ("the Charter");

Reaffirming that all human rights are universal, indivisible and interdependent and interrelated;

Stressing its attachment to human dignity and the protection of all human rights;

Emphasising that human rights must be enjoyed without discrimination;

Reiterating its determination to build cohesive societies by ensuring fair access to social rights, fighting exclusion and protecting vulnerable groups;

Underlining the particular relevance of social rights and their guarantee in times of economic difficulties, in particular for individuals belonging to vulnerable groups;

On the occasion of the 50th anniversary of the Charter,

1. Solemnly reaffirms the paramount role of the Charter in guaranteeing and promoting social rights on our continent;
2. Welcomes the great number of ratifications since the Second Summit of Heads of States and Governments where it was decided to promote and make full use of the Charter, and calls on all those member states that have not yet ratified the Revised European Social Charter to consider doing so;
3. Recognises the contribution of the collective complaints mechanism in furthering the implementation of social rights, and calls on those members states not having done so to consider accepting the system of collective complaints;
4. Expresses its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure;
5. Welcomes the numerous examples of measures taken by States Parties to implement and respect the Charter, and calls on governments to take account, in an appropriate manner, of all the various observations made in the conclusions of the European Committee of Social Rights and in the reports of the Governmental Committee;
6. Affirms its determination to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the European Committee of Social Rights;
7. Invites member states and the relevant bodies of the Council of Europe to increase their effort to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.