



March 2022

# **EUROPEAN SOCIAL CHARTER (REVISED)**

European Committee of Social Rights

Conclusions 2021

## **ROMANIA**

*This text may be subject to editorial revision.*

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts decisions.

Information on the Charter, statements of interpretation, and general questions from the Committee, is contained in the General Introduction to all Conclusions.

The following chapter concerns Romania, which ratified the Revised European Social Charter on 7 May 1999. The deadline for submitting the 20<sup>th</sup> report was 31 December 2020 and Romania submitted it on 11 August 2021.

The Committee recalls that Romania was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to all findings of non-conformity or deferral in its previous conclusions (Conclusions 2017).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2017) found the situation to be in conformity, there was no examination of the situation in 2020.

Comments on the 20<sup>th</sup> report by the Romanian Institute for Human Rights were registered on 20 August 2021. Comments on the 20<sup>th</sup> report by the National Trade Union Bloc (BNS) were registered on 27 July 2021. The reply from the Government to these comments was registered on 3 December 2021.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, the report concerned the following provisions of the thematic group II "Health, social security and social protection":

- the right to safe and healthy working conditions (Article 3);
- the right to protection of health (Article 11);
- the right to social security (Article 12);
- the right to social and medical assistance (Article 13);
- the right to benefit from social welfare services (Article 14);
- the right of elderly persons to social protection (Article 23);
- the right to protection against poverty and social exclusion (Article 30).

Romania has accepted all provisions from the above-mentioned group except Articles 3§4, 13§4, 14, 23 and 30.

The reference period was from 1 January 2016 to 31 December 2019.

The conclusions relating to Romania concern 12 situations and are as follows:

– 3 conclusions of conformity: Articles 3§1, 12§2 and 13§3;

– 8 conclusions of non-conformity: Articles 3§2, 3§3, 11§1, 11§3, 12§1, 12§3, 12§4 and 13§1.

In respect of the situation related to Article 11§2, the Committee needs further information in order to examine the situation.

The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Romania under the Revised Charter.

The next report from Romania will deal with the following provisions of the thematic group III "Labour Rights":

- the right to just conditions of work (Article 2);
- the right to a fair remuneration (Article 4);
- the right to organise (Article 5);

- the right to bargain collectively (Article 6);
- the right to information and consultation (Article 21);
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22);
- the right to dignity at work (Article 26);
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28);
- the right to information and consultation in collective redundancy procedures (Article 29).

The deadline for submitting that report was 31 December 2021.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 1 - Safety and health regulations*

The Committee takes note of the information contained in the report submitted by Romania.

The Committee notes that for the purposes of this report, States were asked to reply to the specific targeted questions put to them in relation to Article 3§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity or deferrals (see appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the remit of the thematic group “Health, social security and social protection”).

In its previous conclusion, the Committee found that, pending receipt of the requested information, the situation in Romania was in conformity with Article 3§1 of the Charter (Conclusions 2017). The assessment of the Committee will therefore only concern the information provided by the Government in response to the targeted questions.

The Committee wishes to point out that it will take note of the reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (i.e., after 31 December 2019). In other words, the information referred to in the Covid-19 section below will not be assessed for the purposes of Charter compliance in the current reporting cycle.

#### **General objective of the policy**

In its targeted question, the Committee asked about policy formulation processes and practical arrangements made to identify new or emerging situations that represent a challenge to the right to safe and healthy working conditions, the results of such processes as well as intended future developments.

In reply to the Committee’s question, the report states that, in accordance with the European Pillar for Social Rights and based on the consensus of all parties involved, Romania adopted, in 2018, the National Strategy on Occupational Health and Safety. According to the report, the strategy is aimed at achieving the objectives set by the European Strategic Framework 2014-2020 on occupational safety and health and future challenges. Those objectives refer to risk prevention and the promotion of safer and healthier occupational conditions for workers, the prevention of occupational accidents and diseases, and the promotion of employees’ health throughout their professional lives.

The report details the general objectives of the National Strategy: A) Better implementation of laws, in particular those regarding micro, small and medium-sized enterprises; B) Improvement of security and protection of workers’ health and prevention of occupational diseases, prioritising those employed in risky economic activities, by developing and providing tools to support micro, small and medium-sized enterprises in complying with legislation and improve the collection of statistical data; C) Stimulation of joint actions with social partners materialising in an effective social dialogue, by envisaging the establishment of a Tripartite National Committee; D) Appropriate management of the issue of elderly workers in the context of the general phenomenon of an ageing population, by awareness-raising and support actions that involve addressing the ageing of the workforce and improving the prevention of occupational diseases. The report also details the measures adopted to reach each of the objectives.

The Committee takes note of the information provided and asks that the next report provide information on the results of the implementation of the National Strategy in the field of occupational safety and health 2018-2020.

In its previous conclusion, the Committee asked that the next report provide information on the activities carried out in terms of research, knowledge and communication relating to psychosocial risks (Conclusions 2017).

In reply to the Committee's question, the report states that the National Strategy stipulates the undertaking of a study on the phenomenon of the ageing workforce, new and emerging risks, and the prevention of occupational diseases, which is expected to result in the development of a method to assess psychosocial risks. The Committee requests that the next report provide specific details of the results of this study. However, the Committee also notes that the report does not provide the information requested regarding psychosocial risks and the workforce in general. The Committee therefore reiterates its request that the next report provide information on the activities carried out in terms of research, knowledge and communication relating to psychosocial risks.

### ***Organisation of occupational risk prevention***

The report states that during the period 2016-2019, the Labour Inspectorate developed specific information materials regarding frequently asked questions on the consultation of workers, the organisation and functioning of occupational safety and health committees, as well as on self-instruction on occupational safety and health. The report also states that the Labour Inspectorate publishes specific information on risk prevention and links to sites of interest on its website.

### ***Improvement of occupational safety and health***

The Committee previously found the situation to be in conformity on this point (Conclusions 2017).

### ***Consultation with employers' and workers' organisations***

The Committee previously found the situation to be in conformity on this point (Conclusions 2017).

## **COVID-19**

In its targeted question, the Committee asked about the protection of frontline workers, instructions and training, the quantity and the adequacy of personal protective equipment provided to workers, and the effectiveness of these measures within the context of the Covid-19 pandemic.

The report contains no response to the targeted question relating to Covid-19.

In line with its Statement on Covid-19 and social rights (March 2021), the Committee recalls that in the context of the Covid-19 crisis, and with a view to mitigating the adverse impact of the crisis and accelerating the post-pandemic social and economic recovery, each State Party must assess whether its existing legal and policy frameworks are adequate to ensure a Charter-compliant response to the challenges presented by Covid-19. Where those frameworks are not adequate, the State must amend them including through the adoption of any additional measures that are required to ensure that the State is able to comply with its Charter obligations in the face of the social rights risks posed by the Covid-19 crisis. In the same vein, the Committee recalls that the Covid-19 crisis does not obviate the requirements set out by its long-standing jurisprudence regarding the implementation of the Charter and the obligation of the States Parties to take measures that allow them to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources.

The Committee points out that, in order to secure the rights set out in Article 3, a response in terms of national law and practice to Covid-19 in terms of national law and practice should

involve the immediate introduction of health and safety measures at the workplace such as adequate physical distancing, the use of personal protective equipment, strengthened hygiene and disinfection measures, as well as stricter medical supervision, where appropriate. In this respect, due account should be taken of the fact that certain categories of workers, such as frontline health care workers, social workers, teachers, transport and delivery workers, garbage collection workers, and agro-food processing workers are exposed to heightened risks. States Parties must ensure that their national policies on occupational safety and health, and their health and safety regulations, reflect and address the hazardous agents and the particular psychosocial risks faced by different groups of workers in the Covid-19 context. The Committee also stresses that the situation requires a thorough review of occupational risk prevention, at national policy level, as well as at company level, in close consultation with the social partners as stipulated by Article 3§1 of the Charter. The national legal framework may require amendment, and risk assessments at company level must be adapted to the new circumstances.

#### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Romania is in conformity with Article 3§1 of the Charter.

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 2 - Safety and health regulations*

The Committee takes note of the information contained in the report submitted by Romania.

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 3§2 of the Charter as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

The Committee notes that it previously found the situation in Romania not to be in conformity with Article 3§2 of the Charter on the ground that domestic workers are not covered by occupational health and safety regulations (Conclusions 2017). The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of non-conformity and to the targeted question.

#### **Content of the regulations on health and safety at work**

In its previous conclusion, the Committee found the situation to be in conformity in this respect but noted that no information was provided on whether regulations concerning health and safety at work covered work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Conclusions 2017).

The report states that the Law on Occupational Health (No. 319/2006), as amended, which transposes the provisions of the Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, provides that the employer has an obligation to assess the risks to safety and health of workers, including the choice of work equipment, chemicals or other substances used and the arrangement of workplaces. Also, under the same Law, the employer must carry out the risk assessment, including for groups of workers sensitive to specific risks.

In its targeted question on Article 3§2, the Committee asked for information on regulations adopted to improve health and safety in evolving new situations such as in the digital and platform economy by, for example, strictly limiting and regulating electronic monitoring of workers, by recognising a right to disconnect, right to be unavailable outside agreed working and standby time, mandatory digital disconnection from the work environment during rest periods. It also requested information on regulations adopted in response to emerging occupational risks.

In response, the report states that under the Law on Occupational Health, the employer is required to assess the risks to occupational safety and health, including the stress at work, aggression and violence specific to work. The report also states that in 2018 the Law on the regulation of remote work was adopted (No. 81/2018) and that it provides that the activity carried out in the workplace may be carried out by the employee away from the workplace, regularly and voluntarily, using information and communication technologies. This Law also sets the rights and obligations of the employer and the employee.

The Committee takes note of this information. It notes, however, that no information is provided on the electronic monitoring of workers, the right to disconnect, right to be unavailable outside agreed working and standby time. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Romania is in conformity with Article 3§2 of the Charter on this point.

The Covid-19 pandemic has changed the way many people work, and many workers now telework or work remotely. Teleworking or remote working may lead to excessive working hours.

The Committee considers that, consistent with States Parties' obligations in terms of Article 3§2, in order to protect the physical and mental health of persons teleworking or working remotely and to ensure the right of every worker to a safe and healthy working environment, it is necessary to enable fully the right of workers to refuse to perform work outside their normal working hours (other than work considered to be overtime and fully recognised accordingly) or while on holiday or on other forms of leave (sometimes referred to as the "right to disconnect").

States Parties should ensure there is a legal right not to be penalised or discriminated against for refusing to undertake work outside normal working hours. States must also ensure that there is a legal right to protection from victimisation for complaining when an employer expressly or implicitly requires work to be carried out outside working hours. States Parties must ensure that employers have a duty to put in place arrangements to limit or discourage unaccounted for out-of-hours work, especially for categories of workers who may feel pressed to overperform (e.g. those during probationary periods or for those on temporary or precarious contracts).

Being connected outside normal working hours also increases the risk of electronic monitoring of workers during such periods, which is facilitated by technical devices and software. This can further blur the boundaries between work and private life and may have implications for the physical and mental health of workers.

Therefore, the Committee considers that States Parties must take measures to limit and regulate the electronic monitoring of workers.

### ***Establishment, alteration and upkeep of workplaces***

The Committee previously found the situation to be in conformity in this respect (Conclusions 2017).

### ***Protection against hazardous substances and agents***

The Committee previously found the situation to be in conformity in this respect but asked the next report to provide details on the provisions relating to the protection of risks of exposure to benzene and sought confirmation that workers were protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No.103, 2007) (Conclusions 2017).

The report provides information about Romanian legislation transposing EU Directives related to the protection of health and safety of workers from the risks related to the presence of chemical agents, carcinogens and mutagens at work.

With regard to ionising radiation, the report states that the National Commission for the Control of Nuclear Activities produces norms in order to ensure the radiological safety of the workers that might be exposed to ionising radiation, of the population and the environment. The norms produced by the Commission are mandatory. Also, as a member of the European Union, Romania has to ensure the transposition and implementation of the *acquis Communautaire* and it transposed the Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation. The report lists the legislation that sets limit values for ionising radiation activities, requirements for the protection of workers that might be exposed to ionising radiation, the population and the environment. Finally, the report states that during inspections the representatives of the National Commission for the Control of Nuclear Activities monitor whether the users of ionising radiation installations comply with radiological safety norms and possess systems of dosimetrist surveillance of workers exposed to ionising radiation.

### ***Personal scope of the regulations***



The Committee previously found the situation not to be in conformity in this respect because it had not been established that the domestic workers were covered by occupational health and safety legislation (Conclusions 2017).

The report states that although the situation of domestic workers is not specifically regulated in Romanian law, in order to ensure that all workers employed under atypical contracts benefit from the same level of protection, the Law on Occupational Health applies to all workers employed in Romania.

The Committee notes that the representative of the Government informed the Governmental Committee that domestic workers were exempt from the provisions of Law on Occupational Health, since this category of workers was not covered by the provisions of the Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety of workers at work. However, the representative of the Government further stated that individuals employing housekeepers or nannies have a legal obligation to conclude an individual labour contract with the workers and thus such workers are automatically covered by the security and safety at work legislation. The Government was invited to provide complete and accurate information on the situation in the next report, in particular does Article 5 of the Law on Occupational Health exclude domestic workers from its scope and if so, is there other legislation which guarantees their health and safety at work and how is it monitored in practice.

The Committee observes that the information provided in the report is not sufficient for it to conclude that domestic workers are covered by occupational health and safety legislation. The Committee therefore reiterates its conclusion of non-conformity with Article 3§2 of the Charter on this point.

#### ***Consultation with employers' and workers' organisations***

The Committee previously found the situation to be in conformity in this respect (Conclusions 2017).

#### *Conclusion*

The Committee concludes that the situation in Romania is not in conformity with Article 3§2 of the Charter on the ground that it has not been established that domestic workers are protected by occupational health and safety regulations.

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 3 - Enforcement of safety and health regulations*

The Committee takes note of the information contained in the report submitted by Romania.

The Committee recalls that for the purposes of the present report States were asked to reply to targeted questions for Article 3§3 of the Charter as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

In its previous conclusion, the Committee concluded that the situation in Romania was not in conformity with Article 3§3 of the Charter (Conclusions 2017).

Assessment of the Committee will therefore concern the information provided by the Government in response to the non-conformity conclusion and to the targeted questions.

#### ***Accidents at work and occupational diseases***

The Committee previously examined the situation regarding accidents at work and occupational diseases and concluded that the situation was not in conformity with Article 3§3 of the Charter on the ground that measures to reduce the excessive number of fatal accidents at work were inadequate (Conclusions 2017). It considered, in particular, that the measures taken to reduce the number of fatal accidents at work was insufficient as the standardised incidence rate of such accidents remained excessively high compared to EU-27 average. It requested information/explanation concerning the reporting obligations of non-fatal accidents at work; the concept of occupational diseases, mechanisms for recognising, reviewing and revising of occupational disease (or the list of occupational diseases), and the measures taken and/or envisaged to counter insufficiency in the recognition and declaration of cases of occupational diseases. In its targeted question on Article 3§3 with regard to accidents at work and occupational diseases, the Committee asked for information on statistical data on prevalence of work-related death, injury and disability including as regards suicide or other forms of self-harm, PTSD, burn-out and alcohol or other substance use disorders, as well as on epidemiological studies conducted to assess the long(er)-term health impact of new high-risk jobs (e.g. cycle delivery services, including those employed or whose work is managed through digital platform; performers in the sports entertainment industry, including in particular contact sports; jobs involving particular forms of interaction with clients and expected to use potentially harmful substances such as alcohol or other psychoactive products; new forms of high-yield high-stress trading; military and law enforcement; etc.) and also as regards the victims of harassment at work and poor management.

In this regard, the report indicates that the total number employees involved in accidents at work remained relatively stable during the reference period (5,271 in 2016 and 5,145 in 2019), although these numbers are significantly higher compared to the previous reference period (3,686 in 2012). In addition, the number of fatal accidents also remained relatively stable between 2016 and 2018 (300 fatalities in 2016 and 268 in 2019) but decreased to 182 in 2019.

According to EUROSTAT data, the number of fatal accidents at work was 229 in 2016, 224 in 2017, 221 in 2018 and 215 in 2019. The incidence rates of such accidents were 6.11 in 2016, 5.72 in 2017 and 5.27 in 2018 which are significantly higher than the EU-27 average rates (2.29 in 2016 and 2.21 in 2018).

According to the same data, the number of non-fatal accidents at work causing four calendar days of absence was 3860 in 2016, 4134 in 2017 and 4298 in 2019. The standardised

incidence rates of such accidents were 87.38 in 2016, 91.8 in 2017 and 92.53 in 2018. The Committee considers, as it did in the previous conclusion (Conclusions 2017), that the standardised incidence rates of non-fatal accidents in Romania are significantly below the EU-27 average (1,772.37 in 2016 and 1,768.93 in 2018). The Committee asks that the next report provide information on measures taken to counter potential underreporting in practice.

In reply to the question raised by the Committee concerning the measures taken to reduce the number of fatal accidents at work, the report states that the national strategy in the field of occupational safety and health 2018-2020 establishes the general and specific objectives at national level in the field of occupational safety and health, in the short and medium term and is developed in accordance with the needs identified in the context of Romania's development. According to the report, the aim of the Strategy is to continue to carry out the specific actions set at national level, taking into account the main challenges set at the level of the European Union, as well as the strategic objectives set by the European Strategic Framework 2014-2020 on occupational safety and health. This Strategy aims to prevent risks and promote safer and healthier working conditions, maintain the good health of workers, prevent work accidents and occupational diseases and promote the health of employees throughout their professional life.

The Committee takes note of the information provided and requests that the next report provide updated information on the implementation of the national strategy and on the concrete measures taken/envisaged in the framework of this strategy in order to reduce the number of fatal accidents at work. It maintains its previous finding that the situation in Romania is not in conformity with the Charter on the ground that measures taken in order to reduce the excessive rate of fatal accidents at work are not sufficient.

In reply to the question raised by the Committee in the previous conclusion regarding the reporting obligations of non-fatal accidents at work, the report indicates that the Law on Occupational Safety and Health provides that *"the work accident registered by the employer is to be reported to the territorial Labour Inspectorate, as well as to the insurer, according to the law."* According to the report, the reporting of non-fatal accidents at work is done by the employer only in case of an accident involving temporary incapacity for work of at least three calendar days or disability. Minor accidents (resulting in superficial injuries that require only first aid treatment and that involve incapacity for work of less than three days) are not reported by the employer to the Territorial Labour Inspectorate or the insurer. The employer has the obligation to keep records of minor accidents in the Sole Register of minor accidents. Labour Inspection checks, during the control actions, the completion of all registers, including the Sole Register for minor accidents.

The Committee takes note of the information provided. It asks that the next report provide information on administrative and criminal sanctions which may be imposed in case of non-reporting/concealment of accidents and minor accidents at work.

In reply to the question raised by the Committee concerning occupational diseases, the report explains that according to the provisions of Law on Occupational Safety and Health, occupational disease is defined as the condition that occurs as a result of exercising a trade or profession, caused by harmful physical, chemical or biological agents, characteristics of the workplace, as well as the overload of various organs or systems of the body in the work process. In the sense of the provisions of the Law, the illnesses suffered by pupils and students during the practical training are also considered as occupational diseases.

The reporting of occupational diseases is mandatory and is made by doctors employed by the territorial public health authorities and the municipality of Bucharest. The research into the causes of occupational diseases, in order to confirm or refute them, is performed by the specialists of the territorial public health authorities, in collaboration with the inspectors from the territorial labour inspectorates. Detailed provisions concerning the procedural steps, documentation, method of reporting of occupational diseases are provided in the Government Decision 1425/2006 for the approval of the Methodological Norms for the

application of the Law on occupational safety and health. The list of occupational diseases with mandatory reporting can be found in Annex 22 of this legislation.

The Committee takes note of the information provided. It asks that the next report provide detailed information on administrative/criminal sanctions applied in case of lack of reporting of occupational diseases.

The report does not provide any information concerning the targeted question raised by the Committee with regard to epidemiological studies conducted to assess the long(er)-term health impact of new high-risk jobs (cycle delivery services, including those employed or whose work is managed through digital platform; performers in the sports entertainment industry, including contact sports; jobs involving particular forms of interaction with clients and expected to use potentially harmful substances such as alcohol or other psychoactive products; new forms of high-yield stress trading; military and law enforcement; etc) and also as regards the victims of harassment at work and poor management. The Committee reiterates its request for information in this regard. It considers that if the requested information is not provided in the next report, there will be nothing to establish that accidents at work and occupational diseases are monitored effectively.

### ***Activities of the labour inspectorate***

The Committee previously examined the situation regarding the activities of the Labour Inspectorate and raised a number of questions regarding the activities of the authority in charge of labour inspection in the civil nuclear sector, the number of inspectors and the percentage of workers covered by inspections and the reasons for the decline in the number of sanctions, fines, orders requiring cessation of activities. The targeted questions with regard to the activities of the Labour Inspectorate concern the organisation of the Labour Inspectorate, and the trends in resources allocated to labour inspection services, including human resources; number of health and safety inspection visits by the labour inspectorate and the proportion of workers and companies covered by the inspections as well as the number of breaches to health and safety regulations and the nature and type of sanctions; whether inspectors are entitled to inspect all workplaces, including residential premises, in all economic sectors.

The report explains that the competent national authority in the nuclear field that ensures compliance with the regulations, issues authorisations and ensures control is the National Committee for the Control of Nuclear Activities (CNCAN). According to the report, CNCAN has no attributions in the field of labour inspection in the nuclear sector established by law, but only responsibilities in verifying the fulfilment by the authorisation holders of the requirements established in the regulations and in the issued authorisations. According to the provisions of Law no. 319/2006 on Occupational Safety and Health, the Ministry of Health is the competent authority in the field of occupational medicine and health surveillance of workers. In the 16<sup>th</sup> National Report on the Implementation of the Charter submitted on 17 May 2017 (examined in Conclusions 2017), the authorities stated that there are specific bodies which inspect the military and nuclear sector although these are excluded from the inspections performed by the Labour Inspectorate. The Committee asks therefore for clarification on whether the civil nuclear sector is inspected in terms of safety and health work by a specific body or the Ministry of Health, as well as information on the inspection activities in this sector.

Regarding the question raised by the Committee in the previous conclusion concerning the activities of the territorial labour inspectorates and the “simplified procedure” followed by those inspectorates, the report explains that in accordance with Art. 29 paragraph (1) of Law 319/2006, “*the investigation of events is mandatory*” and is carried out: a) by the employer, in cases of events that have produced temporary incapacity for work; b) by the territorial labour inspectorates, in case of events that resulted in obvious or confirmed disability, death, collective accidents, dangerous incidents, in case of events that produced temporary

incapacity of work for workers. c) by the Labour Inspectorate, in cases of collective accidents, generated by some special events, such as damages or explosions. According to the report, *the event* is defined according to Law on occupational safety and health, as an accident that resulted in the death or bodily injury, caused during the work process or in the performance of duties (including situations where a person is missing or road/traffic accident , in which employees were involved, as well as the cases which might cause occupational diseases. The investigation of work accidents is carried out by the territorial labour inspectorates in accordance with the legal provisions stipulated by the Methodological Norms for the application of the provisions of Law 319/2006 on Occupational Safety and Health. The Committee asks that the next report provide some clarification on the details of the simplified procedure conducted by the territorial labour inspectorates and explain in which respects the procedure followed by the territorial inspectorates is “simplified” compared to that followed by Labour Inspectorate under the Law on Occupational Safety and Health.

The report indicates that during the reference period, there is a slight decrease in the number of labour inspectors with inspection attributions in the field of occupational safety and health: from 518 labour inspectors in 2016 to 483 inspectors in 2019. In addition, the number of inspections performed also slightly decreased during the reference period: from 58,100 in 2016 to 49,425. The core activity of the Labour Inspectorate, according to the report, is the performance of preventive controls, followed by activities of research of occupational accidents. The Inspectorate also provides consulting and expertise, participates in trainings and professional development activities.

In reply to the question concerning the reasons for the decline in the number of civil sanctions, fines, orders requiring the cessation of activities, the report explains that this decline was due to the positive impact of the new approach to inspection, namely that deficiencies which posed a minor social risk in the field of occupational safety and health were brought into compliance during inspection visits.

The report does not provide any answer to the targeted questions concerning trends in resources allocated to labour inspection services; the proportion of workers covered by the inspections as well as the number of breaches to health and safety regulations and the nature and type of sanctions and on whether inspectors are entitled to inspect all workplaces, including residential premises, in all economic sectors. It also requests information on the measures taken with a view to maintaining the professional capability of inspectors. The Committee considers that if the next report does not provide the information requested, there will be nothing to establish that the activities of the Labour Inspectorate are effective in practice. Pending receipt of the requested information, the Committee defers its conclusions in this respect.

#### *Conclusion*

The Committee concludes that the situation in Romania is not in conformity with Article 3§3 of the Charter on the ground that measures taken to reduce the high rate of fatal accidents at work are not sufficient.

## **Article 11 - Right to protection of health**

### *Paragraph 1 - Removal of the causes of ill-health*

The Committee takes note of the information contained in the report submitted by Romania and in the comments by the Romanian Institute for Human Rights of 20 August 2021.

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 11§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

In its previous conclusion, the Committee concluded that the situation in Romania was not in conformity with Article 11§1 of the Charter on the ground that the measures taken to reduce infant and maternal mortality rates were insufficient (Conclusions 2017). The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of non-conformity and to the targeted questions.

The Committee wishes to point out that it will take note of the reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the Covid-19 section below will not be assessed for the purposes of Charter compliance in the current reporting cycle.

### ***Measures to ensure the highest possible standard of health***

In its previous conclusion, the Committee found that the situation in Romania was not in conformity with the Charter on the ground that the measures taken to reduce infant and maternal mortality were insufficient (Conclusions 2017).

The report provides information on the maternal and infant mortality. Maternal mortality rate per 100,000 live births was 10.6 in 2019, a decrease compared to 13.1 in 2015. The data in the report shows that the infant mortality rate per 1,000 live births decreased from 7.3 in 2015 to 6.1 in 2019. The report provides comprehensive information on the causes of maternal and infant deaths, such as pathology, severe postpartum haemorrhage, severe preeclampsia, eclampsia, severe systemic infection, sepsis, uterine rupture, lack of monitoring of pregnancy in socially vulnerable women.

The Committee notes that the representative of the Government informed the Governmental Committee that the figures on mortality rates showed a slight decrease and indicated that Romania would continue the measures to reduce infant and mortality rates.

The Committee takes note of the reforms initiated and the measures taken to reduce maternal and infant mortality. It asks to be kept informed on the implementation of such measures, their effect on reducing the maternal and infant mortality rate, updated data regarding the trends of the mortality rates and on any developments in this field. However, the Committee notes that the maternal and infant mortality rate remains high (well above the average in the European Union (maternal mortality rate per 100,000 live births was 6 in 2017 in the EU and infant mortality rate per 1,000 live births was 3.4 in 2019). In view of the high rates of maternal and infant mortality, as well as the still low life expectancy, the Committee reiterates its conclusion of non-conformity on this point.

In its targeted question for this cycle, the Committee asked for overall and disaggregated statistical data on life expectancy across the country and different population groups (urban; rural; distinct ethnic groups and minorities; longer term homeless or unemployed; etc.) identifying anomalous situation (e.g. particular areas in the community; specific professions or jobs; proximity to active or decommissioned industrial or highly contaminated sites or

mines; etc.) and on prevalence of particular diseases among relevant groups (e.g. cancer) or blood borne infectious diseases (e.g. new cases HIV or Hepatitis C among people suffering from substance use disorders or who are held in prison; etc.).

In reply to the Committee's targeted question on statistical data on life expectancy across the country and different population groups, the report indicates that, in 2019, life expectancy at birth was 75.99 years (average) (for example, the EU-27 average of 81.3 in 2019), and 77.45 years for women and 70.19 years for men. The report further indicates that the death rate in Romania decreased slightly from 13.6 deaths per 1,000 inhabitants in 2018 to 13.4 deaths per 1,000 inhabitants in 2019).

The Committee notes that there is a substantial gender gap, with women expected to live more than 7 years longer than men. The Committee also notes that according to the report *Romania: Country Health Profile 2019* (OECD, the European Observatory on Health Systems and Policies and the European Commission), inequalities in life expectancy exist not only by gender but also by level of education. The life expectancy of the least educated men is 10 years shorter than that of the most educated, while for women the difference is 4 years. It is estimated that more than half of all deaths in Romania are attributable to behavioural risk factors, including dietary habits, tobacco smoking, alcohol consumption and low levels of physical activity. Also, Romania had the highest mortality rate from treatable causes in the EU in 2016.

In their comments on the report, the Romanian Institute for Human Rights (RIHR) expresses its concern that with regard to early detection of cervical cancer, only 0.89 per cent of the eligible women were tested and notes that awareness raising campaigns could be organised to increase the early testing of eligible women. The RIHR is also concerned about the high notification rate of measles in Romania.

The Committee takes note of the information submitted by the RIHR and notes that the answer by the Government was not submitted. The Committee thus asks the next report to provide information on the measures taken to increase the early testing of women for cervical cancer, as well as measures taken to decrease the notification rate of measles.

### **Access to healthcare**

In its targeted question, the Committee asked for information about sexual and reproductive healthcare services for women and girls (including access to abortion) and statistical information about early (underage or minor) motherhood.

The report describes that a Centre of Excellence for Prenatal Pathology was established in 2016, in 2018 a study on surviving mothers of severe obstetric pathologies was initiated. In 2018 the list of investigations for prenatal screening was significantly expanded. The report lists basic health services available to pregnant women and young mothers, such as primary medical care, specialized outpatient healthcare for clinical specialties. As of April 2018, direct monitoring of pregnancies can take place directly in the specialist outpatient clinical department. According to the information provided in the report, more pregnant women from rural areas choose constant prenatal care during their pregnancy. The report also states that for the medical assistance for the premature children, training programmes were organised for professionals and resources were allocated to the training. Also, in 2016 national programme "Mother and Child" was implemented in order to equip 123 hospital units with 634 medical incubators. Also, the report states that the newborn and the mother benefit from medical monitoring and that regular visits until the child is one year old are compulsory. During such visits mothers receive information and counselling on nutrition, baby care and family planning.

The report does not provide information on access to abortion. The Committee notes from other sources that in accordance with the legal framework, women in Romania can access an abortion in a State hospital within the first 14 weeks of pregnancy and thereafter under limited circumstances. However, in accordance with the Professional Code for Medics of

2016, any doctor can refuse to provide services if they might affect their professional independence or moral values or contravenes their professional principles, and it appears that such refusals are widespread in Romania in connection with abortions.

The Committee recalls having held that, in respect of abortion, once States Parties introduce statutory provisions allowing abortion in some situations, they are obliged to organise their health service system in such a way as to ensure that the effective exercise of freedom of conscience by health professionals in a professional context does not prevent patients from obtaining access to services to which they are legally entitled under the applicable legislation (International Planned Parenthood Federation – European Network (IPPF EN) v. Italy, complaint No. 87/2012, decision on the merits of 10 September 2013, §69; and *Confederazione Generale Italiana de Lavoro* (CGIL) v. Italy, Complaint No 91/2013, Decision on the merits of 12 October 2015, §166-167).

The Committee asks for information on the measures and actions taken to ensure that the exercise of freedom of conscience by health professionals in Romania does not prevent patients from obtaining access to services to which they are legally entitled under the applicable legislation and from benefiting from unbiased, confidential and medically accurate counselling.

The Committee reiterates its request for information on access to abortion. It also asks for information on the costs of abortion and whether they are reimbursed by the State in total or in part.

The Committee asks for information on the measures taken to ensure that women and girls have access to modern contraception. It also asks for information on the proportion of the cost of contraceptives that is not covered by the State (in cases where the cost is not fully reimbursed by the State).

The Committee reiterates its request to provide statistical information about early (underage or minor) motherhood.

The Committee asks the next report to contain information on the public health expenditure as a share of GDP.

In its previous conclusion the Committee asked whether the legal recognition of gender for transgender people requires (in law or in practice) that they be subjected to sterilisation or any other invasive medical treatment that could affect their health or physical integrity (Conclusions 2017).

In reply, the report states that Law on civil status documents (No. 119/1996) provides the conditions under which civil status documents may be amended and it states that they can be amended after the change of sex, after the final and irrevocable decision of a court.

The Committee takes note of this information. The Committee also recalls that the European Court of Human Rights has recently found a violation of Article 8 of the European Convention on Human Rights because of the refusal of the Romanian authorities to legally recognise the applicants' gender reassignment for lack of gender reassignment surgery (*X and Y v. Romania*, complaints Nos. 2145/16 and 20607/16, Judgment of 19 January 2021, §167). In view of this information, the Committee finds that the situation in Romania of transgender people is not in conformity with Article 11§1 of the Charter.

The Committee refers to its general question as regards the right to protection of health of transgender persons in the general introduction. The Committee recalls that respect for physical and psychological integrity is an integral part of the right to the protection of health guaranteed by Article 11. Article 11 imposes a range of positive and negative obligations, including the obligation of the state to refrain from interfering directly or indirectly with the enjoyment of the right to health. Any kind of unnecessary medical treatment can be considered as contrary to Article 11, if accessing another right is contingent upon undergoing



that treatment (Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2015, decision on the merits of 15 May 2018, §§74, 79, 80).

The Committee recalls that state recognition of a person's gender identity is itself a right recognised by international human rights law, including in the jurisprudence of the European Court of Human Rights, and is important to guaranteeing the full enjoyment of all human rights. It also recalls that any medical treatment without free informed consent (subject to strict exceptions) cannot be compatible with physical integrity or with the right to protection of health. Guaranteeing free consent is fundamental to the enjoyment of the right to health, and is integral to autonomy and human dignity and the obligation to protect the right to health (Transgender Europe and ILGA Europe v. Czech Republic, *op. cit.*, §§78 and 82).

The Committee invites states to provide information on the access of transgender persons to gender reassignment treatment (both in terms of availability and accessibility). It asks whether legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other medical requirements which could impair their health or physical and psychological integrity. The Committee also invites states to provide information on measures taken to ensure that access to healthcare in general, including sexual and reproductive healthcare, is provided without discrimination on the basis of gender identity.

As a targeted question, the Committee asked for information on measures to ensure informed consent to health-related interventions or treatment (under Article 11§2). The report does not provide any information in this sense. The Committee asks that information be provided in the next report on the measures taken to ensure informed consent to health-related interventions or treatment.

### **Covid-19**

In the context of the Covid-19 crisis, the Committee asked the States Parties to evaluate the adequacy of measures taken to limit the spread of virus in the population, as well as the measures taken to treat the ill (under Article 11§3).

For the purposes of Article 11§1, the Committee considers information focused on measures taken to treat the ill (sufficient number of hospital beds, including intensive care units and equipment, and rapid deployment of sufficient numbers of medical personnel).

The report provides no information requested, thus the Committee reiterates its request.

The Committee recalls that during a pandemic, States Parties must take all necessary measures to treat those who fall ill, including ensuring the availability of a sufficient number of hospital beds, intensive care units and equipment. All possible measures must be taken to ensure that an adequate number of healthcare professionals are deployed (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

The Committee recalls that access to healthcare must be ensured to everyone without discrimination. This implies that healthcare in a pandemic must be effective and affordable to everyone, and States must ensure that groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status are adequately protected by the healthcare measures put in place. Moreover, States must take specific, targeted measures to ensure enjoyment of the right to protection of health of those whose work (whether formal or informal) places them at particular risk of infection (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

During a pandemic, States must take all possible measures as referred to above in the shortest possible time, with the maximum use of financial, technical and human resources, and by all appropriate means both national and international in character, including

international assistance and cooperation (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

### *Conclusion*

The Committee concludes that the situation in Romania is not in conformity with Article 11§1 of the Charter on the grounds that:

- the measures taken to reduce infant and maternal mortality rates have been insufficient;
- transgender people have to undergo sterilisation in order to receive legal recognition.

## **Article 11 - Right to protection of health**

### *Paragraph 2 - Advisory and educational facilities*

The Committee takes note of the information contained in the report submitted by Romania.

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter with respect to the provisions falling within the thematic group "Health, social security and social protection") as well as previous conclusions of non-conformity or deferrals.

In its previous conclusion, the Committee found that the situation in Romania was in conformity with Article 11§2 of the Charter, pending receipt of the information requested (Conclusions 2017).

### ***Education and awareness raising***

In its targeted questions, the Committee asked for information about health education (including sexual and reproductive health education) and related prevention strategies (including through empowerment that can serve as a factor in addressing self-harm conducts, eating disorders, alcohol and drug use) in the community, on a lifelong or ongoing basis, and in schools.

Regarding health education and related prevention strategies in the community, the report states that since 2017, an advert regarding the benefits of exclusive breastfeeding in the first 6 months of a child's life has been broadcast through television networks with national coverage. In addition, the National Institute for Mother's and Child's Health, in cooperation with some associations, implemented the programme "RENASC" ("Reborn") from June 2018 to October 2019. This programme made it possible to build a national network for the promotion of reproductive health through integrated public policies, gathering 700 relevant persons from over 45 organisations, NGOs and public or private institutions. The report adds that the programme also includes ensuring better access to information and sexual education, as well as expanding pre-conception care and antenatal screening. The Action Plan for increasing access to the family planning services developed in the programme was endorsed by the Ministry of Health and will serve as a model for the next strategic policy framework and an operational plan for sexual and reproductive health in Romania 2020-2030. The Committee asks for information in the next report on how the above-mentioned plan for sexual and reproductive health in Romania 2020-2030 is being developed.

The Committee takes note of the information regarding the Standards, Procedure and Methodology for the evaluation and accreditation of hospitals approved by Order 446/2017 of the Minister of Health, and between December 2017 and December 2020, the implementation of the project "Hospital-Community, continuous care flow of the new-born and infant at high risk of illness and death".

The Committee recalls that informing the public, particularly through awareness-raising campaigns according to the nature of the public health issues in the countries, must be a public health priority. The Committee also recalls that measures should be introduced to prevent activities that are damaging to health, such as smoking, alcohol and drugs, and to develop a sense of individual responsibility, including such aspects as healthy eating habits, sexuality, and the environment. In line with the foregoing, the Committee asks that the next report provide information on the specific general awareness-raising campaigns and activities carried out during the reference period.

Regarding health education and related prevention strategies in schools, the report details how health education is provided at curricular and extra-curricular levels. At the curricular

level, health education is covered in the common core of Natural Sciences and Physical Education in primary education, and in Biology classes in middle school and high school; through the optional course on Health Education, valid for all pre-university education cycles; within the high school curriculum for optional subjects: adolescence, and self-knowledge; and within coordination classes/activities in the subject of Personal development/orientation and counselling. With reference to the extra-curricular level, the report quotes the "Education activities for health and a healthy lifestyle" from the Scoala Altfel (School differently) programme that is included in the structure of the school year. The programme also comprises the organisation of competitions at county and national levels to promote the best activities and capitalise on examples of good practice. The report further quotes the development of national competitions specific to this field, such as the contest "Skilled Sanitarians", the anti-drug projects "Together", the contest of health care "Let's help!", "Your health matters", "*Mens sana in corpore sano*", the competition "Health education, preparatory class and grades I-XI". The Committee takes note of the information provided and asks that the next report provide updated, specific information on how sexual and reproductive education is provided in schools in Romania.

In its targeted questions, the Committee also asked for information about awareness and education with respect to sexual orientation and gender identity (SOGI) and to gender-based violence. The report does not contain the required information. Therefore, the Committee reiterates its request. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Romania is in conformity with Article 11§2 of the Charter in this respect.

### ***Counselling and screening***

The Committee takes note of the information contained in the report regarding access to counselling for the population at large. The report quotes the National Programme for the Prevention, Surveillance and Control of HIV Infection, the sub-programme for active early detection of cervical cancer by performing Babeş-Papanicolau testing in the eligible female population, and the activities carried out by community nurses and health mediators regarding women in the vulnerable population. The report also quotes the contribution of health mediators in the dissemination of basic notions on healthy lifestyles, of information on the access of community members to health care and medico-social services and on public health campaigns (such as immunisation programmes, identifying transmissible diseases) for the Roma communities. The report further quotes the monitoring and supporting work developed by the community team regarding medical and social issues that affect the most vulnerable persons. This Community health mediation and nursing programme was regulated in 2017.

The Committee asks that the next report provide specific information and statistics on access to counselling and screening programmes in rural areas for women and children as well as for the population at large.

### ***Conclusion***

Pending receipt of the information requested, the Committee defers its conclusion.

## **Article 11 - Right to protection of health**

### *Paragraph 3 - Prevention of diseases and accidents*

The Committee takes note of the information contained in the report submitted by Romania.

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

Therefore, it will focus on the Government’s replies to the targeted questions, namely about healthcare services in prison; community-based mental health services; drug abuse prevention and harm reduction; healthy environment; immunisation and epidemiological monitoring; Covid-19; and any previous deferrals or non-conformities.

The Committee wishes to point out that it will take note of the information provided in reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (namely, after 31 December 2019). In other words, the information referred to in the Covid-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

In its previous conclusion, the Committee deferred its conclusion (Conclusions 2017).

### ***Healthcare services in places of detention***

In a targeted question, the Committee asked for a general overview of healthcare services in places of detention, in particular prisons (under whose responsibility they operate/which ministry they report to, staffing levels and other resources, practical arrangements, medical screening on arrival, access to specialist care, prevention of communicable diseases, mental health-care provision, conditions of care in community-based establishments when necessary, etc.).

The Committee notes that the information requested is not provided. Therefore, the Committee reiterates its question and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Romania is in conformity with Article 11§3 of the Charter.

### ***Community-based mental health services***

In a targeted question, the Committee asked for information regarding the availability and extent of community-based mental health services and on the transition to community-based mental health from former large-scale institutions. The Committee also asked for statistical information on outreach measures in connection with the mental health assessment of vulnerable populations and on proactive measures adopted to ensure that persons in need of mental healthcare are not neglected.

The Committee notes that the information requested is not provided. Therefore, the Committee reiterates its question and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Romania is in conformity with Article 11§3 of the Charter

Consistent with the World Health Organisation (WHO) Comprehensive Mental Health Action Plan 2013-2030, and other relevant standards, the Committee considers that a human rights-compliant approach to mental health requires at a minimum the following elements: a) developing human rights-compliant mental health governance through, inter alia, mental health legislation and strategies that are in line with the Convention on the Rights of Persons

with Disabilities and other relevant instruments, best practice and evidence; b) providing mental health in primary care community-based settings, including by replacing long-stay psychiatric hospitals with community-based non-specialised health settings; and c) implementing strategies for promotion and prevention in mental health, including campaigns to reduce stigmatisation, discrimination and human rights violations.

The Committee further notes that Article 15§3 of the Charter ordinarily provides an opportunity to examine the process of deinstitutionalisation of adults with disabilities. As Romania has not ratified that provision, the issue in question falls to be assessed under Article 11§3 of the Charter.

Accordingly, the Committee asks for information as follows:

- the number of fully and/or partially closed institutions, or the reduction in the number of beds in long-stay psychiatric hospitals; if a deinstitutionalisation strategy is in place, what the timeline is for the closure of all institutions;
- the alternatives that have been put in place: the type of community-based services, including access to personal assistance, housing options, and access to mainstream services, including employment and education;
- with regard to housing, to what extent people leaving institutions are able to choose where and with whom they would like to live, and whether they are obliged to access a particular living arrangement to access support;
- data on the number of people living in group housing (small group homes, family-type homes etc.) after leaving institutions, disaggregated by age and impairment.;
- how services are funded, how disability-related costs are funded, and how individuals are assessed for access to different support services and allowances;
- how the quality of community-based services is monitored, and how persons with disabilities and their representative organisations are involved in the delivery, monitoring or evaluation of community-based services.

### ***Drug abuse prevention and harm reduction***

In a targeted question, the Committee asked for information about drug-related deaths and transmission of infectious diseases among people who use or inject psychoactive substances both in the community and in custodial settings. The Committee also asked for an overview of the national policy designed to respond to substance use and related disorders (dissuasion, education, and public health-based harm reduction approaches, including use or availability of WHO listed essential medicines for opioid agonist treatment) while ensuring that the “available, accessible, acceptable and sufficient quality” criteria (WHO’s 3AQ) are respected, subject always to the exigency of informed consent. This rules out, on the one hand, consent by constraint (such as in the case of acceptance of detox and other mandatory treatment in lieu of deprivation of liberty as punishment) and, on the other hand, consent based on insufficient, inaccurate or misleading information (i.e. not based on state of the art scientific evidence).

The report provides information about the main drugs used in Romania.

The Committee notes that the information requested is not provided. Therefore, the Committee reiterates its question and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Romania is in conformity with Article 11§3 of the Charter.

### ***Healthy environment***

In a targeted question, the Committee asked for information on the measures taken to prevent exposure to air, water or other forms of environmental pollution, including proximity to active or decommissioned (but not properly isolated or decontaminated) industrial sites with contaminant or toxic emissions, leakages or outflows, including slow releases or

transfers to the neighbouring environment, nuclear sites, mines, as well as on the measures taken to address the health problems of the populations affected, and to inform the public, including pupils and students, about general and local environmental problems.

The report notes that trends regarding air and water pollution during the reference period have shown an overall improvement, but without providing data in that regard. The report further lists the legislative amendments designed to strengthen air quality monitoring adopted during the reference period and describes the procedure for adopting air quality plans when key pollutants exceed target values. Lastly, the report lists the main sources of information on air quality.

The country report published as part of the European Union Environmental Implementation Review 2019 notes that waste management remains a key challenge and that Romania is still struggling to implement the Urban Waste Water Treatment Directive and to improve the quantity and quality of drinking water. Poor air quality continues to be a problem, with the main sources of air pollution coming from the transport and energy sectors, in particular fossil fuels/use of domestic solid fuel by households.

The Committee notes that the report does not provide sufficient information in response to the targeted question. Therefore, the Committee reiterates its request for information on the measures taken to prevent exposure to air, water or other forms of environmental pollution, the measures taken to address the health problems of the populations affected, and the measures taken to inform the public about general and local environmental problems. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Romania is in conformity with Article 11§3 of the Charter.

### ***Immunisation and epidemiological monitoring***

In its previous conclusions, the Committee noted that during the reference period there was a dramatic decrease in the immunisation coverage at national level for the vaccines included in the National Immunisation Programme, which was under the 95% limit recommended by the World Health Organisation (WHO) (Conclusions 2017). The Ministry of Health announced activities aimed at increasing the immunisation coverage over the coming years and initiated the development of a draft law on vaccination. The Committee also noted that Romania experienced severe measles outbreaks starting from January 2016, outside the reference period at the time, notably affecting infants too young to be vaccinated. Romania also faced critical vaccine shortages or delays. Consequently, the Committee asked for updated information on the coverage rates as well as on the impact of the measures taken to increase the immunisation coverage in the next report, while reserving its position on this point in the meantime.

The report includes a table showing that the immunisation coverage for the main vaccines during the reference period has remained predominantly stable, and thus well below the European Union average or WHO recommended targets of 95%. The Committee notes that at least 17 918 cases and 59 deaths were recorded during the measles outbreak of 2016-2017, due to sub-optimal vaccination (European Centre for Disease Prevention and Control, Country Profile for Romania). The Committee also refers to the State of Health in the European Union's Romania Country Health Profile 2019, which indicated that reasons for the outbreak include insufficient information on the free vaccination entitlement reaching the older population, and the vaccine supplies not reaching mobile communities such as the Roma. The State Party report does not discuss the measures taken to address these factors, such as adopting the law on vaccination, enhancing confidence in vaccination, improving the capacity of vaccine providers, or addressing the issue of vaccine shortages.

The Committee notes that the information requested is not provided, namely with regard to the measures taken to increase the immunisation coverage, as reflected in updated coverage rates, and asks for it to be provided in the next report. Meanwhile, the Committee

concludes that the situation is not in conformity with Article 11§3 of the Charter on the ground that efficient immunisation and epidemiological monitoring programmes are not in place.

In a targeted question, the Committee asked States Parties to describe the measures taken to ensure that vaccine research is promoted, adequately funded and efficiently coordinated across public and private actors.

The report does not address this question.

### ***Covid-19***

The Committee asked States Parties to evaluate the adequacy of measures taken to limit the spread of the Covid-19 virus in the population (testing and tracing, physical distancing and self-isolation, provision of surgical masks, disinfectant, etc.).

The report does not address this question.

The Committee recalls that States Parties must take measures to prevent and limit the spread of the virus, including testing and tracing, physical distancing and self-isolation, the provision of adequate masks and disinfectant, as well as the imposition of quarantine and 'lockdown' arrangements. All such measures must be designed and implemented having regard to the current state of scientific knowledge and in accordance with relevant human rights standards (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020). Furthermore, access to healthcare must be ensured to everyone without discrimination. This implies that healthcare in a pandemic must be effective and affordable to everyone, and that groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status must be adequately protected by the healthcare measures put in place (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

### ***Conclusion***

The Committee concludes that the situation in Romania is not in conformity with Article 11§3 of the Charter on the ground that efficient immunisation and epidemiological monitoring programmes are not in place.



## **Article 12 - Right to social security**

### *Paragraph 1 - Existence of a social security system*

The Committee takes note of the information contained in the report submitted by Romania.

### ***Risks covered, financing of benefits and personal coverage***

In its previous conclusion (Conclusions 2017) the Committee noted that the Romanian social security system continued to cover all the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors) and the system continued to rest on collective funding: it was funded by contributions (employers, employees) and by the State budget.

The Committee has previously considered that it had not been established that a significant percentage of the active population was covered by unemployment insurance. The Committee notes from the report in this respect that according to the data provided by the National Institute of Statistics, the labour resources in 2019 stood at 12,2 million and active civilian population at 8,7 million. According to the National Agency for Employment, the insured population registered in the unemployment insurance system stood at 6,4 million. The Committee thus understands that 75% of the active civilian population were registered under unemployment insurance system.

With regard to occupational accidents and diseases, the Committee notes from the report that the active population in Romania is insured under the insurance system for occupational accidents and diseases, as occupational risks are manifested during the active period of a person.

The Committee asks the next report to provide information regarding the total coverage of population under healthcare system and child benefits system. As regards income replacement benefits, it asks for updated information on the percentage of active population covered for unemployment, sickness, old age and disability. The Committee holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

### ***Adequacy of benefits***

According to Eurostat data, in 2019 the poverty level, defined as 50% of median equivalised income stood at €160 per month and 40% percent of equivalised income at € 128 per month. In 2019, the minimum wage was RON 2080 ( €416) per month.

As regards the minimum level of **unemployment** benefit, the Committee notes from the report that the unemployment benefit is an amount granted monthly and in a differentiated manner, depending on the contribution period. The minimum amount represents 75% of the value of the reference social indicator of unemployment insurance for persons with a contribution period of at least one year. The value of the reference social indicator in 2019 stood at 500 RON (€ 101). The Committee notes that the reference social indicator has not changed since the previous reference period. 75% of this value amounted to € 75 in 2019. The Committee considers that despite the substantial increase in the median equivalised income, the minimum level of unemployment benefit has remained unchanged and its level is manifestly inadequate as it falls below the poverty level. Therefore, the situation is not in conformity with the Charter.

In its previous conclusion the Committee asked how the law defined a "suitable job offer" and what were the situations where a job offer can be declined without losing entitlement to the benefits. The Committee notes in this respect that according to Article 42, paragraph (1) of Law No 76/2002 on the unemployment insurance system and employment stimulation, do not benefit from unemployment benefits persons who, at the date of applying for the right,

refuse a job *suitable to their training or level of education* or refuse to participate in services for employment stimulation and training provided by employment agencies. According to Article 44, the payment of unemployment benefits granted to beneficiaries ceases on the date of unjustified refusal to enter a job suitable to the preparation or level of education or on the date of unjustified refusal to participate in employment incentive training or at the date of their interruption for reasons attributable to the person. Unjustified refusal means that the beneficiary of the unemployment benefit does not accept the solutions related to employment or, as the case may be, his/her qualification or requalification, offered on the basis of counselling or mediation. According to the report, Article 70 of Law 76/2002, with subsequent amendments and completions, concerns the hypothesis of refusal, for imputable reasons, of a job that corresponds to the professional competencies certified on the basis of professional standards (or professional training standards), offered by the employment agency to the person who benefits, free of charge, from the unemployment insurance budget. The Committee asks whether there is an initial period where an unemployed person can refuse a job offer not corresponding to his/her professional competences.

As regards **old-age** benefits, in its previous conclusion the Committee considered that the minimum amount of old age benefit fell between 40 and 50% of the median equivalised income.

The Committee notes from the report that during the reporting period, the value of the pension point increased from RON 871 in 2017 to RON 1265 in 2019. The average pension increased in the reference period from RON 885 (€ 197) in 2016 to RON 1203 (€ 253) in 2019. The Committee notes from MISSOC that in 2019 the minimum pension stood at RON 704 (€147) per month. As regards additional benefits, according to the report, persons receiving the minimum social pension can also receive aid for heating, if they meet the eligibility conditions imposed by law. Pensioners who are beneficiaries of the social pension are entitled to six journeys per year, with a 50% discount on the fare set for regional and interregional trains. As of 2019 pensioners who are granted social allowance benefit from the 90% of compensation programme of the reference price of medicines. The Committee notes that the level of minimum pension lies between 50% and 40% of the median equivalised income. However, aggregated with additional benefits, such as heating allowance, transport discount and medicines discount, the Committee considers that its level is adequate.

As regards the minimum levels of benefits that can be paid in the event **disability**, according to the report persons who have not reached the standard retirement age and who have lost all or at least half of their working capacity and who have completed a contribution period, in accordance with the law, may benefit from disability pension.

According to the regulations applicable to the disability pension, if the disability pension due is below the level of social allowance for pensioners (respectively below the level of RON 704 as of September 2019), the state budget will cover the difference. Pensioners classified in the first degree of disability have the right, in addition to the pension, to a companion allowance, in a fixed amount, which represents 80% of the value of a pension point, established under the law.

The report further states that persons with disabilities can combine the minimum social pension rights with the right to the allowances granted to persons with special needs, regulated by Law 448/2006 on the protection and promotion of the rights of persons with disabilities, as amended. The Committee asks whether persons in receipt of disability pension are also entitled to other additional benefits, such as heating and transport allowances. In the meantime, it reserves its position as regards the adequacy of disability benefit.

### *Conclusion*

The Committee concludes that the situation in Romania is not in conformity with Article 12§1 of the Charter on the ground that the minimum level of unemployment benefit is inadequate.

## **Article 12 - Right to social security**

*Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security*

The Committee takes note of the information contained in the report submitted by Romania.

The Committee recalls that Romania ratified the European Code of Social Security on 9 October 2009 and has accepted Parts II (medical care), III (sickness benefit), V (old-age benefit), VII (family benefit) and VIII (maternity benefit).

The Committee also recalls that Article 12§2 obliges States to maintain a social security system at a satisfactory level, concerning at least six of Parts II to X of the European Code of Social Security (with Part II counting as two parts and Part V counting as three parts).

The Committee notes from Resolution CM/ResCSS(2020)15 of the Committee of Ministers on the application of the European Code of Social Security by Romania (period from 1 July 2018 to 30 June 2019) that the law and practice in Romania continue to give effect to Parts II, III, VII and VIII of the Code and that they also apply Part V, subject to further increasing the replacement rate of old-age pensions.

### *Conclusion*

The Committee concludes that the situation in Romania is in conformity with Article 12§2 of the Charter.

## **Article 12 - Right to social security**

### *Paragraph 3 - Development of the social security system*

The Committee takes note of the information contained in the report submitted by Romania and the comments by the National Trade Union Confederation, *Blocul Național Sindical (BNS)*.

The Committee recalls that States were asked to reply to two targeted questions for Article 12§3 of the Charter as well as, where applicable, the previous conclusions of non-conformity or deferral (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

In its previous conclusion (Conclusions 2017), the Committee considered that the situation in Romania was not in conformity with Article 12§3 of the Charter on the ground that efforts made to progressively raise the system of social security to a higher level were inadequate.

The Committee’s assessment will therefore relate to the information provided by the Government in response to its finding of non-conformity and the two targeted questions with regard to Article 12§3 of the Charter, namely:

- social security coverage, and its modalities, provided to persons employed by digital platforms or whose work is managed via such platforms; and
- any impact of the Covid-19 crisis on social security coverage, and any specific measures taken to compensate for or alleviate any possible negative impact.

The Committee wishes to point out that it will take note of the reply to the second targeted question for information purposes only, as it relates to developments that occurred outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the Covid-19 section below will not be assessed for the purposes of Charter compliance in the current reporting cycle.

### ***Development of the social security system***

The Committee recalls that Article 12§3 requires States to improve their social security system. A situation of progress may consequently be in conformity with Article 12§3 even if the requirements of Articles 12§1 and 12§2 have not been met or if these provisions have not been accepted. The expansion of schemes, protection against new risks or an increase in the level of benefits are all examples of improvement. A partly restrictive development in the social security system is not automatically in breach of Article 12§3. It should be assessed in the light of Article 31 of the 1961 Charter or Article G of the revised Charter. The assessment of the situation is based on the following criteria:

- the nature of the changes (field of application, conditions for granting allowances, amounts of allowance, etc.);
- the extent of the changes (categories and numbers of people concerned, levels of allowances before and after alteration);
- the reasons given for the changes (aims pursued) and the social and economic policy context in which the changes arise;
- the necessity of the reform;
- the existence of social assistance measures for those who find themselves in a situation of need as a result of the changes made (this information can be submitted under Article 13);
- the results obtained by such changes.

Measures taken in order to consolidate public finances may be considered as a necessary means to ensure the maintenance and sustainability of the social security system. However, any modifications should not undermine the effective social protection of all members of society against social and economic risks and should not transform the social security

system into a basic social assistance system. Therefore any changes to a social security system must ensure the maintenance of a basic compulsory social security system which is sufficiently extensive (see for example Finnish Society of Social Rights v. Finland, complaint No. 88/2012, decision on the merits of 9 September 2014, §§85-86).

In its previous conclusion, the Committee considered that the efforts made to progressively raise the system of social security to a higher level were inadequate, and asked for the next report to provide information on any changes made during the reference period and their effect on the personal scope of the system and the minimum level of income replacement benefits. The Committee noted, in particular, the following negative developments: no adjustment of the social reference indicator since 2008; a significant decrease in the number of registered unemployed persons receiving benefits; and a decrease in the replacement rate for old-age pensions.

On the subject of the social reference indicator, the Government states that the amounts of assistance benefits are set in relation to a social benchmark by applying a social inclusion index. The Ministry of Labour and Social Protection intends to improve the effectiveness of social assistance benefits by considering the possibility of establishing another indexation mechanism which would make adjustments to benefits predictable. In this context the Ministry launched a project entitled "Support for the development of an indexation mechanism and for piloting a new payment method for social assistance benefits in Romania" funded by the European Commission (August 2019 to October 2020). The project has two main components, whose aims are as follows: (i) devise a new indexation mechanism for social assistance benefits and (ii) identify a new method for the payment of benefits. The Committee asks for information in the next report on the results of this project.

The Government also states that a parliamentary initiative (PLX 453/2020) provides for an increase in the social reference indicator, which will have an impact on the amounts of state-funded social assistance benefits (between 2021 and 2023, i.e. outside the reference period). The Committee wishes to be informed of the results of this initiative.

As to unemployment benefits, the Committee notes that according to the data in the report, an average of about 19% of unemployed persons received unemployment benefit (were "compensated") between 2016-2019, meaning a further reduction in this figure. The Committee asks for the reasons for this reduction to be given in the next report (such as any changes in the criteria for entitlement to benefit).

With regard to old age pension, the Committee notes the increase in the guaranteed minimum social pension. However, the replacement for old-age pensions has continued to decrease, falling from 35.6% in 2016 to 27% in 2019. The Committee asks for detailed information on this trend in the next report (including the reasons for it and its impact).

Lastly, the Committee notes that in November 2017, the Government adopted Emergency Ordinance 79/2017, which substantially altered the structure of social contributions, transferring the fiscal burden of obligations relating to social and social health insurance contributions from the employer to the employee. As a result, since 1 January 2018, the fiscal burden on wages and income treated as wages has been distributed as follows: 35% for employees and 2.25% for employers (plus, for employers, 4% for difficult working conditions and 8% for special or other working conditions), whereas it was 16.5% for employees and 22.75% for employers before this date.

The Government states that these amendments are in line with the Unitary Wages Act adopted in summer 2017 which provided for a 25% increase in gross salaries for most public service employees from January 2018 on. In addition, to offset the transfer of social contributions, the Government increased the minimum gross wage by 31% and called on the social partners to renegotiate private sector wages.

The Government asserts that the transfer of compulsory social contributions to employees was made in order to improve national fiscal norms to combat tax avoidance. Another

reason was a desire for administrative simplification, which was expected to have a positive impact on the business environment as the result of a reduction in the number of social contributions, particularly through the elimination of certain obligations on employers.

Another objective was an increase in the revenue of the state social insurance budget. In this connection, the Government states that in 2018, the reform led to a substantial increase in the amount of social contributions paid and that this made it possible to reduce the deficit of the public pension system. The reform was promoted with the argument that there was a need both to improve the sustainability of the pension system and to adjust long-term benefits.

According to the BNS, the funding structure introduced in 2018 by Emergency Ordinance 79/2017 has increasingly placed the burden of financing the social security system on employees (about 62% according to the National Institute of Statistics). It adds that the low-wage trap has also been affected by the new funding structure. Romania was well below the European average in this respect in 2017 but found itself well above in 2020, becoming the country with the sixth highest rate of taxation on low wages. In the BNS's view, this reform poses a threat to the viability of the social security system, particularly the health and old-age pension schemes which are already in a chronic state of deficit.

The Committee notes a number of negative developments during the reference period. In particular, the average number of unemployed persons receiving unemployment benefits and the replacement rate for old-age pensions continued to decrease. Furthermore, the social reference indicator was not adjusted (although projects to do so had been launched).

The Committee also notes that Emergency Ordinance 79/2017 made substantial changes to the fiscal burden of the social security contribution system and that these changes affected most workers.

The Committee considers that the reasons for and effects of the changes made by Emergency Ordinance 79/2017 are unclear. Nor has it been demonstrated that these changes pursue the legitimate aim of consolidating public finances so as to preserve the social security system and ensure that it is viable. Consequently, the Committee asks for detailed information in the next report on the results of this reform in terms of the overall improvement of the social security system, the amount of benefits paid and the impact on workers' standard of living, particularly those in low-paid jobs in the private sector.

In the light of the information available, the Committee considers that the measures taken to progressively raise the social security system to a higher level are inadequate.

### ***Platform workers***

The Committee recalls that it has posed a targeted question to all States on social security cover for persons employed or whose work is managed by digital platforms. The emergence of these new forms of employment has had a negative impact on certain rights of these workers, as explained in the General Introduction. In matters of social security, compliance with Article 12§3 of the Charter requires that the existing social security systems be adapted to the specific situation and needs of the workers concerned, in order to guarantee that they enjoy the social benefits included within the scope of Article 12§1. The Committee is keenly aware that there are significant gaps in the social coverage of workers in new forms of employment such as platform workers. It considers that the States Parties are under an obligation to take all the necessary measures to address these shortcomings.

In particular States Parties must take steps to ensure that all workers in new forms of employment have an appropriate legal status (employee, self-employed or other category) and that this status is in line with the actual situation thus avoiding abuse (such as the use of "bogus" or "false" self-employed status to circumvent the applicable social security regulations) and conferring adequate social security rights as guaranteed by Article 12 of the Charter on the platform workers.

In its report, the Government states that in the public pension system, the persons who realise incomes from independent activities for which a social insurance contribution is due are compulsorily insured, according to Law 227/2015 on the Fiscal Code, with subsequent amendments and completions.

Article 148 of Law 227/2015 provides that individuals who earn income from independent activities from one or more sources and/or income categories, should pay social insurance contributions, if their net income is equal to 12 minimum gross salaries, in force at the time of submission of the single declaration on income tax and social contributions due by individuals.

The Committee notes that the Government has not provided any detailed information on social cover for digital platform workers. The Committee asks for information in the next report on the number of digital platform workers (as a percentage of the total number of workers), their status (employees, self-employed and/or other category), the number/percentage of these workers by status and their social security protection (by status).

### ***Covid-19***

In response to the second targeted question, the Government gives details of the temporary measures taken in 2020 to alleviate the negative impact of the covid-19 crisis on social security coverage, employment and the labour market. In the social security sphere, these measures were mainly intended to guarantee timely payment of social benefits and meet needs created by the pandemic.

The Committee takes note of the following measures in particular:

- extended payment of some social benefits (such as monthly allowances for leave and care for children with disabilities aged seven or under);
- automatic extension of the validity of some documents and simplification of social security procedures (such as lifting the requirement for unemployed persons to report monthly to an employment agency and allowing electronic transmission of supporting documents);
- payment of daily allowances to parents of children enrolled in school or pre-school establishments where such establishments are forced to close temporarily because of the state of emergency (allowance calculated on the basis of the basic salary though not exceeding the daily equivalent of 75% of average gross earnings);
- payment of salaries out of the unemployment insurance fund to employees whose employment contracts were temporarily suspended by their employers (75% of the basic salary corresponding to the job held but no more than 75% of average gross earnings);
- payment of allowances by the state to certain categories of worker (such as the liberal professions) but no more than 75% of the average gross earnings as provided for by Law 6/2020.

### ***Conclusion***

The Committee concludes that the situation in Romania is not in conformity with Article 12§3 of the Charter on the ground that efforts made to progressively raise the system of social security to a higher level are inadequate.

## **Article 12 - Right to social security**

### *Paragraph 4 - Social security of persons moving between States*

The Committee takes note of the information contained in the report submitted by Romania.

### ***Equality of treatment and retention of accrued benefits (Article 12§4)***

#### ***Right to equal treatment***

The Committee recalls that the guarantee of equal treatment within the meaning of Article 12§4 requires States Parties to remove all forms of discrimination against nationals of other States Parties from their social security legislation (Conclusions XIII-4 (1996), Statement of Interpretation on Article 12§4). Both direct and indirect discrimination should be eliminated. National legislation cannot reserve a social security benefit to nationals only or impose extra or more restrictive conditions on foreigners. Nor may national legislation stipulate eligibility criteria for social security benefits which, although they apply without reference to nationality, are harder for foreigners to comply with than nationals, and therefore affect them to a greater degree. However, pursuant to the Charter's Appendix legislation may require the completion of a period of residence for non-contributory benefits. In this respect, Article 12§4a requires that any such prescribed period of residence be reasonable. The Committee considers that the right to equal treatment covers both equal access to the social security system and equal conditions for entitlement to social security benefits.

The Committee notes from the report that according to the legislation in force, the social insurance rights are granted to Romanian citizens, foreigners or stateless persons, regardless of domicile or citizenship, provided that they have been insured in the public pension system in Romania. In accordance with the provisions of Article 7 paragraph 2 of Law 346/2002 on insurance for occupational accidents and diseases, foreign citizens or stateless persons employed by a Romanian employer are insured against accidents at work and are entitled to the same benefits as Romanian citizens. The Committee asks the next report to confirm that equal treatment of nationals of non-EEA States Parties, lawfully resident in Romania is ensured as regards access to social security system and conditions for entitlement to social security benefits, such as healthcare, old age, unemployment and sickness. The Committee considers that if this information is not provided in the next report, there will be nothing to establish that the right to equal treatment is guaranteed.

As regards equal treatment in respect of family benefits, the Committee recalls that the purpose of child benefits is to compensate the costs of maintenance, care and education of children. Such costs primarily occur in the State where the child actually resides.

The Committee further recalls that child benefits are covered by different provisions of the Charter, and in particular by Article 12§1 and Article 16 of the Charter. Under Article 12§1 States Parties have an obligation to establish and maintain a social security system including a family benefits branch. Under Article 16 States Parties are required to ensure the economic protection of the family by appropriate means. The primary means should be child benefits provided as part of social security, available either universally or subject to a means-test. States Parties have a unilateral obligation to pay child benefits in respect of all children resident in their territory on an equal footing, whether they are nationals or have moved from another State Party.

The Committee is aware that States Parties that are also EU Member States, on the basis of the EU legislation on coordination of the social security system are obliged to apply coordination rules which to a large extent prescribe exportability of child benefits and family allowances. When the situation is covered by the Charter, and the EU legislation does not apply, the Committee has regard to its interpretation according to which the payment of child benefits to all residing children, as a starting point, is a unilateral obligation for all States



Parties. The Committee decides no longer to examine the issue of exportability of child benefits under Article 12§4a.

Under Article 12§4a of the Charter the Committee will only examine whether child benefits are paid to children, having moved from another State Party, on an equal footing with nationals, thus ensuring equal treatment of all resident children. Under Article 16 the Committee will examine equal treatment of families as regards access to family benefits and whether the legislation imposes length of residence requirement on families for entitlement to child benefit.

The Committee notes from MISSOC that Romania applies the rules whereby the payment of family benefits is conditional on the claimant's children being resident in Romania. The Committee asks the next report to confirm that all resident children are equally treated in respect of family benefits.

### ***Right to retain accrued rights***

The Committee recalls that old-age benefit, disability benefit, survivor's benefit and occupational accident or disease benefit acquired under the legislation of one State according to the eligibility criteria laid down under national legislation should be maintained (exported) irrespective of whether the beneficiary moves between the territories.

The Committee notes from the report that export of benefits is ensured by the bilateral agreements with Albania, Moldova, North Macedonia, Turkey and Serbia. However, for some States some exceptions are made in relation to certain benefits. The bilateral social security agreements concluded by Romania contain provisions regarding different social security benefits, having a wider or narrower scope, depending on the compatibility between the social security system of Romania and that of the state that is a party to the agreement. Most of the agreements contain provisions regarding the opening and granting of the right to a pension from the public pension system in Romania (old-age, early, partially early, disability, survivor). Some bilateral social security agreements also include provisions on benefits from the health insurance system, accidents at work and occupational diseases, unemployment and the state allowance for children, respectively.

The Committee asks how the export of accruing rights is ensured for nationals of those States Parties with which no relevant bilateral agreements have been concluded.

### ***Right to maintenance of accruing rights (Article 12§4b)***

The Committee recalls that under Article 12§4b there should be no disadvantage in terms of accrual of rights for persons who move to another State for employment in instances in which they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. Implementation of the right to maintenance of accruing rights requires, where necessary, the accumulation of employment or insurance periods completed in another territory for the purposes of the opening, calculation and payment of benefits. In the case of long-term benefits, the pro-rata approach should also be employed. States may choose between the following means in order to ensure maintenance of accruing rights: bilateral or multilateral agreement or, unilateral, legislative or administrative measures. States that have ratified the European Convention on Social Security are presumed to have made sufficient efforts to guarantee the retention of accruing rights.

According to the report, Romania continues the negotiations for concluding new social security agreements with States Parties in order to ensure the application of the principle of accumulation of insurance periods. The Committee considers that as the Government has not demonstrated that progress has been made, there have been no changes to the situation which it has previously considered not to be in conformity with the Charter.

Therefore, it reiterates its previous finding of non-conformity on the ground that maintenance of accruing rights is not ensured with all States Parties.

*Conclusion*

The Committee concludes that the situation in Romania is not in conformity with Article 12§4 of the Charter on the ground that maintenance of accruing rights is not ensured with all States Parties.

## **Article 13 - Right to social and medical assistance**

### *Paragraph 1 - Adequate assistance for every person in need*

The Committee takes note of the information contained in the report submitted by Romania.

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

Therefore it will focus on the Government’s replies to the targeted questions, namely about measures taken to ensure that the right to social and medical assistance is ensured and any previous deferrals or non-conformities.

The Committee wishes to point out that it will take note of the information provided in reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the Covid-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

The previous conclusion considered that the situation in Romania was not in conformity with Article 13§1 of the Charter on the ground that uninsured persons without resources were not entitled to adequate medical assistance. It will therefore focus its consideration to the Government’s replies to the targeted questions, as well as to the developments concerning the previous non-conformity and the questions asked in the former conclusions.

### ***General legal framework, types of benefits and eligibility criteria***

The Committee takes note of the developments during the reference period. In 2018, Law No. 192/2018 introduced measures to ensure that beneficiaries of social assistance enter the labour market and to prevent and limit any form of dependence on state or community aid. The report refers that, according to the law, in a situation in which the beneficiaries of social assistance refuse a job or participation in employment and vocational training services offered by employment agencies, the right to social assistance ceases. In case of refusal of a job, another right can be requested only after a period of 12 months from the date of the decision to terminate the right. The Committee asks the next report whether the withdrawal of social assistance in response to the rejection of a job offer leaves the person concerned completely deprived of his or her means of subsistence and for how long. It reserves its position on this point in the meantime. Other laws and decrees were also adopted during the reference period (Law No. 66/2016 on leave and monthly allowance for raising children, several decrees regarding allowances for peoples with disabilities, etc.).

The Committee also asked in 2017 whether the suspension of social assistance as a result of failure to comply with some provisions of the law does not affect the individual’s right to benefit from other types of social care benefits, such as the financial allocation for family support, kindergarten tickets or social benefits for heating. The report states that during the period of termination or, as the case may be, suspension of the right to social assistance, people in need may benefit from other social assistance rights, such as family allowance, aid for heating, allowance for children (Law no. 61/1993) and allowances for people with disabilities.

The report also refers to the implementation of the Minimum Inclusion Income (VMI), a reform which was launched in 2016 according to Law No. 196/2016. The Government approved the extension of this Law until April 2021, as the implementation of Law No. 196/2016 was postponed due to difficulties in completing the national IT system of social

assistance, as well as the lack of capacity of local public administration authorities to ensure data processing of beneficiaries and verify eligibility criteria. The national IT system of social assistance will be realised through PNRR (National Recovery and Resilience Plan). It will be implemented with European funds and aims to develop the IT system and the interoperability and interconnection platform between the institutions concerned. This will facilitate the correlation and integrated management of data management and processing systems for the two components of the social assistance field (social services and benefits), as well as the interoperability of data on social service beneficiaries and social assistance benefits, but also of other social protection allowances (pensions, unemployment).

In its previous conclusions (Conclusions 2015, Conclusions 2017) the Committee found that the situation was not in conformity with the Charter as uninsured persons were not entitled to adequate *medical assistance*.

The Committee notes from the report that it develops extensively the available access to health for insured persons. Only certain categories of people have the right to health care even if they do not pay the contribution (as regulated by Law No. 95/2006 on healthcare, which lists the categories of persons who are entitled to insurance, without paying the contribution, already cited in its former report). The report also refers to the fact that there is a minimum package of medical services in primary health care and in specialised outpatient health care for clinical specialties. This includes, in addition to medical-surgical emergencies surveillance and detection of endemic-epidemic diseases, care related to pregnancy and family planning and other specific situations.

As in its previous assessment, the Committee considers that the report does not provide any new elements to the situation which it has previously considered not to be in conformity with the Charter. It notes that those persons without resources, not belonging to any of the specific categories detailed in the legislation, are not entitled to medical assistance in the meaning of this provision. The Committee has considered that the right to medical assistance should not be confined to emergency situations and that a system not including primary or specialised outpatient medical care, which a person without resources might require, did not sufficiently ensure health care for poor or socially vulnerable persons who become sick (European Roma Rights Centre (ERRC) v. Bulgaria, complaint No 46/2007, Decision on the merits of 3 December 2008). The Committee therefore reiterates its previous finding of non-conformity.

### **Levels of benefits**

To assess the situation during the reference period, the Committee takes into account the following information published in the MISSOC and Eurostat database:

- Basic benefit: the Committee notes from the report that the guaranteed minimum income by law for a single person was RON 142 for the period 2016 to 2019 (€ 28.77), approximately 16% of the median income. It is the same amount as during the former period. Social assistance is conditioned by the active search for a job, the beneficiary being obliged to work for the benefit of the community a number of hours equivalent to the amount of social assistance, based on the minimum wage. Thus, for the amount granted as social assistance, one of the working adults in the beneficiary family has the obligation to perform monthly, at the request of the mayor, actions or works of local interest, without exceeding the normal working regime and in compliance with the rules on occupational safety and health. According to MISSOC (data of 31 December 2019), the Social Aid (*ajutor social*) formula is the guaranteed minimum income minus the Net Income. For a single person it would be RON 71.5 (€ 15) per month.
- Additional benefits: according to MISSOC, there are no housing allowances. Heating allowances are part of the social assistance scheme. They are available to all those with low income (owners and tenants) during the cold season (1 November – 31 March). The amount depends on the monthly average net

income per family member. The report states that the aid for heating with wood, coal and petroleum fuels is of around 58 RON (for social assistance beneficiaries). The report further states that the social assistance for the canteen amounts to RON 16 per day for 30 days, which would be RON 480. However, these are benefits in kind, as it is food provided to people in difficulty;

Therefore, according to the report, a single person without resources is granted the basic benefit, plus the food benefit (RON 142 + 480), so a total of RON 622, approximately €127. During the cold season, it would be RON 622 +68= RON 680, which is approximately € 139.

- Poverty threshold estimated at 50% of the median equivalised income and calculated on the basis of Eurostat at-risk-of-poverty threshold): it was estimated at €160 in 2019.

The Committee takes note that the report establishes that the amount of € 139 represents 73% of the median income per equivalent adult. However, there is a discrepancy with Eurostat data, which estimated the 50% of the median equivalised income at €160 in 2019. Based on this, the Committee concludes that the combined level of basic and supplementary benefits available to a single person without resources is manifestly inadequate as the total amount that can be obtained falls below the poverty threshold. Therefore, the situation is not in conformity with the Charter.

### ***Right of appeal and legal aid***

The Committee notes that no targeted questions were asked as regards the right of appeal and legal aid. It requests that the next report provide for information as regards the right of appeal and legal aid.

### ***Personal scope***

The specific questions asked in relation to the personal scope of Article 13§1 in this cycle refer only to the foreign nationals unlawfully present in the territory, unless there is a pending request of information on foreign nationals lawfully present in the territory.

#### **Foreign nationals lawfully present in the territory**

In its previous conclusion (Conclusion 2017) the Committee asked whether any length of residence was required for nationals of States Parties lawfully resident in order to benefit from medical assistance.

According to the provisions of Article 222 para. (1), (2) and (3) of Law No. 95/2006 on health care reform, medical care is provided, according to this law, to all Romanian citizens with domicile or residence in the country; to the foreign citizens and stateless persons who have applied for and obtained the extension of the right of temporary residence or are domiciled in Romania; to citizens of EU Member States, the EEA and the Swiss Confederation who do not have insurance taken out in the territory of another Member State which produces effects in the territory of Romania, who have applied for and obtained the right of residence in Romania, for a period of more than 3 months; for persons from the Member States of the EU, the EEA and the Swiss Confederation who fulfil the conditions of cross-border worker namely they carry out an employed or self-employed activity in Romania and reside in another Member State to which he/she usually returns daily or at least once a week.

The minimum period of 3 months of residence required to EEA and Swiss Confederation nationals to access medical care does not seem excessive and is compatible with the Charter.

#### **Foreign nationals unlawfully present in the territory**

The Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of

emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187). The Committee asked in its 2017 Conclusions whether the legislation and practice comply with these requirements.

The report states that in accordance with the provisions of Article 104 of Ordinance 194/2002 on the legal regime of aliens, during the accommodation in the centres, the aliens with illegal stay on the Romanian territory are provided with accommodation, food, maintenance and hygiene materials, as well as medical and psychological assistance. As not all foreigners are required to be in custody centres, depending on their legal situation, foreigners are either tolerated on national territory or request international protection in Romania. Thus, in the case of tolerated aliens, the costs of accommodation and food are no longer borne by the State. If they do not have sufficient funds to support their existence they can use the support of NGOs. For those applying for international protection, they benefit from the rights provided by Law 122/2006 on Asylum in Romania.

The Committee notes from the report that foreign nationals unlawfully resident who cannot apply for international protection are not entitled to social assistance rights to cope with an urgent and serious state of need. It considers therefore that the situation is not in conformity with the Charter on this point.

### ***Medical and social assistance during the Covid-19 pandemic***

According to the report, homeless people benefit from social assistance during the period in which they are registered in the public social assistance services within the administrative-territorial units in which they live. In the context of the Covid-19 pandemic, hygiene products were distributed and the activity of social services such as residential centres for elderly care and assistance were continued. There were also measures adopted to ensure the implementation of the subsidies' program, in order for the social services providers to be able to continue providing social services. Legislation was adopted from March 2020, introducing measures that would allow the access of all insured persons to medical services, medicines and medical devices during the state of emergency, as well as during the state of alert. It was also regulated that the medical services, medicines and medical devices provided for the treatment of patients diagnosed with Covid-19 and their complications be reimbursed for insured persons, uninsured persons, as well as other persons located in Romania, from the budget of the State.

The Committee asks the next report to provide further information on measures adopted and its implementation, as well as on access of both insured and uninsured persons to medical and social assistance during the Covid-19 pandemic.

### ***Conclusion***

The Committee concludes that the situation in Romania is not in conformity with Article 13§1 of the Charter on the grounds that:

- uninsured persons without resources are not entitled to adequate medical assistance;
- the level of social assistance paid to a single person without resources is inadequate;
- foreign nationals unlawfully present who cannot apply for international protection are not entitled to social assistance rights.

**Article 13 - Right to social and medical assistance**

*Paragraph 2 - Non-discrimination in the exercise of social and political rights*

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

### **Article 13 - Right to social and medical assistance**

#### *Paragraph 3 - Prevention, abolition or alleviation of need*

The Committee takes note of the information contained in the report submitted by Romania.

The Committee recalls that Article 13§3 concerns services offering free personal assistance and counselling as may be required to prevent, to remove, or to alleviate personal or family want. It further recalls that for the purposes of the present report States were asked to reply to targeted questions, as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the scope of the thematic group “Health, social security and social protection”). However, no targeted questions were posed in respect of Article 13§3 of the 1961 Charter. The Committee deferred its previous conclusion (Conclusions 2017). It will therefore limit its examination to the Government’s replies to its previous request for relevant complementary information.

The Committee has previously recalled that, when assessing national situations in the light of this provision, it specifically examines whether there are mechanisms in place to ensure that persons in need receive help and personal advice services free of charge and whether the relevant services and institutions are sufficiently well distributed on a geographical basis. The Committee asked for more specific information on how these requirements were met. In particular, it asked whether the National Agency for Payments and Social Inspection (ANPIS) had a role in providing personal assistance and guidance to persons in need wishing to apply for social assistance benefits.

In response, the report states that the information and guidance on the rights and obligations of vulnerable persons in difficulty is based on the provisions of Government Ordinance 27/2000 which regulates petitions. Counselling and guidance of beneficiaries are performed both at national level (through the Ministry of Labour and Social Protection and the ANPIS), and at county level and locally (through the Public Social Assistance Services). The Ministry of Labour and Social Protection and the ANPIS provide beneficiaries with e-mail addresses and telephone numbers to which they can address their questions and receive free assistance (information, clarifications, answers) regarding the legislation in force and ongoing social assistance programmes. ANPIS oversees the county agencies ensuring the coordination, guidance and control of their activity. Information to beneficiaries can be provided at local level through the Public Social Assistance Services. The report describes in detail the scope of the counselling and other services, the procedures, and the process of providing social services.

As regards geographical distribution, the report states that according to Art. 113 of the Social Assistance Law, all local public administration authorities are required to set up specialised structures called public social assistance services (PSAS). Currently, there are 960 PSAS accredited as social service providers: 251 PSAS are registered in urban areas, while there are 709 public social assistance services in rural areas.

In response to the Committee’s specific question about the ANPIS, the report explains that it implements the policies and strategies developed by the Ministry of Labour and Social Protection in the field of the national social assistance system. Its objectives also include facilitating the access of the entitled persons to social assistance benefits in accordance with the law. In this regard, its role is to provide personal assistance and guidance to persons in need who want to apply for social assistance. In addition to the above, the ANPIS’s tasks include providing guidance to the central and local public administration authorities, individuals and legal entities, whether public or private, with social assistance responsibilities, so they can exercise their activity in good conditions, improve their activity, as well as prevent any breaches of the legal provisions.



The report also provides information on projects that implement the legislative framework in practice, such as training specialised Public Social Assistance Services staff and creating a functional help desk / call centre regarding the granting of social assistance benefits.

*Conclusion*

The Committee concludes that the situation in Romania is in conformity with Article 13§3 of the Charter.