



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

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

**REPUBLIC OF MOLDOVA**

Meeting in Chisinau 29 May 2018

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## I. SUMMARY

With respect to the procedure provided by Article 22 of the 1961 Charter – examination of non-accepted provisions – the Committee of Ministers decided in December 2002 that "states having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and had "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned".

Following this decision, five years after ratification of the Revised European Social Charter ("the Charter"), and every five years thereafter, the European Committee of Social Rights ("the Committee") reviews the non-accepted provisions with the countries concerned, with a view to securing a higher level of acceptance. As past experience had shown that States Parties tended to overlook that selective acceptance of Charter provisions was meant to be a temporary phenomenon, the aim of the procedure was to require them to review the situation after five years and encourage them to accept more provisions.

The Republic of Moldova ratified the Revised European Social Charter on 8 November 2001, accepting 63 of the 98 paragraphs. It has not accepted the Additional Protocol of 1995 providing for a system of collective complaints. The procedure on the non-accepted provisions was applied for the first time in the context of a meeting between the European Committee of Social Rights and representatives of various Moldovan ministries held in Chisinau on 21 March 2006.

The second meeting on non-accepted provisions took place in Chisinau on 1 December 2011. Following this meeting, the European Committee of Social Rights delegation at the time confirmed that from the point of view of the situation in law and in practice there were no obstacles to the immediate acceptance of the following provisions: Articles 7§6, 10§2, 10§3, 14§1, 14§2, 19§1, 19§4 (a) and (b), 19§5, 19§9, 22, 27§1 and 27§3.

Furthermore, the Committee considered that the acceptance of the following provisions was also possible: Articles 3§4, 4§2, 10§1, 10§4 and 19§3.

The Committee further considered that acceptance was not immediately possible in respect of the following provisions/ the acceptance of the following provisions seemed uncertain in that legal and institutional framework: Articles 15§3, 19§6, 19§10, 19§11, 19§12.

Current examination: With a view to carrying out the procedure for the third time, the Moldovan authorities were invited to organise a meeting which took place in Chisinau on 29 May 2018. The Committee proceeded to the examination of the situation on the basis of the information provided by the authorities during the meeting and in writing.

The Committee considered that there were no significant obstacles in law and in practice to the acceptance of Articles: 7§5, 10§5, 13§4, 15§3, 18§1, 18§2, 19§2, 19§6, 19§10, 19§11.

Acceptance of Articles 4§1 and 23 might also be considered in the near future.

On the other hand, some obstacles remain for the acceptance of Articles 25, 30, 19§4 c), 19§12, 31§1, 31§2 and 31§3.

An exchange of views also took place concerning the 1995 Additional Protocol to the Charter providing for a system of collective complaints. Participants were interested to know more about the collective complaints procedure. The representatives of employers' organisation

and the Ombudsman expressed their support and recommended the acceptance of the collective complaints procedure by the Republic of Moldova.

The authorities through Mr. Boris Gilca, Secretary General of State, the Ministry of Health, Labour and Social Protection, expressed the engagement/commitment and readiness for preparing the acceptance of additional provisions by the Republic of Moldova. He confirmed the political engagement to realise economic and social rights and ensured that securing human dignity for all people is a priority for the Republic of Moldova.

Mr. Boris Gilca suggested that the Moldovan authorities cooperate with the Council of Europe in order to establish a “roadmap” which will include clear guidance for the acceptance of new provisions in a not too distant future. He also suggested that specific projects on the rights guaranteed by the Charter would be developed by the Council of Europe in order to strengthen the implementation of the Charter in the Republic of Moldova.

The Committee wished to encourage the Moldovan authorities to work towards accepting additional provisions where it concluded that there were no significant obstacles in law and in practice to do so and to complete this work with a positive result as soon as possible thus consolidating the paramount role of the Charter in guaranteeing and promoting social rights. It invited them to consider the possibility of accepting the collective complaints procedure.

The European Committee of Social Rights remains at the disposal of the authorities for continued dialogue on the non-accepted provisions.

The next examination of the provisions not accepted by the Republic of Moldova will take place in 2021.

The programme of the meeting appears in Appendix I and the list of participants in Appendix II. The situation of the Republic of Moldova with respect to the Charter appears in Appendix III.

## **II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS**

The meeting was chaired by Mr. Boris Gilca, Secretary General of State, the Ministry of Health, Labour and Social Protection, and Mrs. Marcela Tirdea, Head of Department Policy Analysis, Monitoring and Evaluation of the Ministry of Health, Labour and Social Protection.

The authorities of the Republic of Moldova presented the situation in law and in practice relating to the non-accepted provisions. Interventions were made by representatives of the Ministry of Health, Labour and Social Protection, National Agency of Social Security, National House of Social Insurance, the National Employment Agency, Ministry of Education, Culture and Research, Ministry of Interior (Migration and Asylum Office), Ministry of Finance, Ministry of Economy and Infrastructure, etc (see list of participants in Appendix II).

Questions and relevant comments were also raised by the representatives of the national Ombudsman institution (“*Avocatul Poporului*”), trade unions (“National Confederation of Trade Unions”) and the employers’ organisations (“National Confederation of Employers”).

The Committee delegation consisted of the Mrs. Kristine Dupate and Mr. Jozsef Hajdu. The Secretariat of the Council of Europe was represented by Mr. Regis Brillat and Mrs. Diana Balanescu. They presented some aspects of the case-law with regard to the non-accepted provisions and the possible acceptance of these provisions by the Republic of Moldova. One session of the meeting was devoted to the collective complaints procedure.

**1. Thematic Group 1 Employment, training and equal opportunities: Article 1 - Article 9 - Article 10 - Article 15 - Article 18 - Article 20 - Article 24 - Article 25.**

As mentioned above, during the previous meeting on non-accepted provisions, it was considered that the following provisions could be accepted by the Republic of Moldova: Article 10§1, Article 10§2, Article 10§3 and Article 10§4.

Thus, the provisions discussed under the current examination were: Article 10§5, Article 15§3, Article 18§1, Article 18§2 and Article 25.

**Article 10§5 Right to vocational training - Full use of facilities available**

**Situation in the Republic of Moldova**

The Moldovan authorities indicated that the Education Code No. 152, which was adopted on 17 July 2014, establishes the legal framework for the design, organisation, operation and development of the education system in the Republic of Moldova. Article 9 of the Education Code provides that all citizens of the Republic of Moldova have equal rights of access to education and initial and continuing vocational training through the national education system. The professional/vocational training plays a very important role with regard to the labour market.

The authorities confirmed that under Article 150 of the Education Code, the admission to study of foreigners shall be carried out under the same conditions applied to the citizens of the Republic of Moldova.

Lifelong learning (Article 123 of the Education Code) covers general, vocational, technical and higher education as well as adult continuing vocational training. Lifelong learning takes place in contexts of formal, non-formal and informal education. Article 125 of the Education Code provides that the State guarantees access and supports, including financially, lifelong learning.

Information was provided with regard to the technical vocational education which for certain professions shall take place in a “dual education system” in parallel in technical vocational education establishments and in enterprises or other economic units. The Government Decision No. 70 of 22 January 2018 established the Rules on the organisation of technical vocational training programmes through dual education. The notion of apprenticeship (“*ucenicia*”) was introduced and the “apprentice in dual education” was defined as a student who has been enrolled in studies under authorised and accredited dual education programmes and has concluded an apprenticeship agreement with an economic agent. It was reported that the vocational training through dual education was extended to 21 programmes. Dual training is achieved through the cooperation of 19 technical vocational education institutions with 43 economic entities.

In general, the technical vocational training shall be financed: (a) from the state budget; (b) the fees paid by the interested individuals and legal entities; c) from other [legally established] sources.

By way of example, it was mentioned that the Ministry of Education monitors the pedagogical institutions which prepare the future teachers and importance is also being given to programmes for continuing education/training of medical staff.

## Opinion of the Committee

The Committee recalls that paragraph 5 of Article 10 provides for complementary measures which are fundamental to make access effective in practice.

- a) reducing or abolishing any fees or charges;

States Parties must ensure that vocational training, as defined in paragraph 1, is provided free of charge or that fees are progressively reduced. According to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees admitted to reside in any capacity other than being a student or a trainee, or having authority to reside by reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training.<sup>1</sup>

- b) granting financial assistance in appropriate cases;

Access to vocational training also implies the granting of financial assistance, whose importance is so great that the very existence of the right to vocational training may depend on it.<sup>2</sup> All issues concerning financial assistance for vocational training up to higher education, including allowances for training programmes in the context of the labour market policy,<sup>3</sup> are dealt with under paragraph 4.<sup>4</sup> States Parties must provide financial assistance either universally, or subject to a means-test, or awarded on the basis of the merit. In any event, assistance should at least be available for those in need<sup>5</sup> and shall be adequate.<sup>6</sup> It may consist of scholarships or loans at preferential interest rates. The number of beneficiaries and the amount of financial assistance are also taken into consideration for assessing compliance with this provision.<sup>7</sup>

Equal treatment with respect to financial assistance must be guaranteed to non-nationals on the basis of the conditions mentioned under paragraph 1.<sup>8</sup>

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

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

- d) ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training

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<sup>1</sup> Conclusions XVI-2 (2003), United Kingdom

<sup>2</sup> Conclusions VIII (1984), Statement of Interpretation on Article 10§5

<sup>3</sup> Conclusions XVI-2 (2004), Slovak Republic

<sup>4</sup> Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§5

<sup>5</sup> Conclusions XIII-1 (1993), Turkey

<sup>6</sup> Conclusion XVI-2 (2004), Slovak Republic

<sup>7</sup> Conclusions XIV-2 (1998), Ireland

<sup>8</sup> Conclusions 2003, Slovenia

arrangements for young workers, and the adequate protection of young workers generally.

States Parties must evaluate their vocational training programmes for young workers, including the apprenticeships. In particular, the participation of employers' and workers' organisations is required in the supervision process.<sup>9</sup> While paragraphs 1 to 4 of Article 10 mainly deal with the right of access to vocational training and continuing vocational training, paragraph 5 focuses on complementary measures which are nonetheless fundamental to make access effective in practice, such as reducing or abolishing any fees or charges or granting financial assistance in appropriate cases.

States must evaluate their vocational training programmes for young workers, including the apprenticeships. In particular, the participation of employers' and workers' organisations is required in the supervision process.<sup>10</sup>

In view of these requirements and in the light of the information provided, the Committee considered that there were no obstacles to the acceptance of Article 10§5 of the Charter.

***Article 15§3 Right of persons with disabilities to independence, social integration and participation in the life of the community - Integration and participation of persons with disabilities in the life of the community***

**Situation in the Republic of Moldova**

The authorities provided detailed information on the developments in the Republic of Moldova regarding the social inclusion of persons with disabilities such as the Law No. 60 of 30 March 2012 on the social inclusion of persons with disabilities and various types of social services for people with disabilities (e.g. "Community House", "Protected Housing", "Personal Assistance", "Respiro", "Family Placement for Adults", "Mobile Team").

Information was also provided with respect to:

- providing people with mobility disabilities, including disabled children, with wheelchairs and other technical assistance facilities tailored to their needs (e.g. 1060 wheelchairs and 902 technical facilities were provided in 2017);
- interpretation services performed by the Association of people with impaired hearing but paid by the Ministry of Health, Labour and Social Protection (e.g. 5,144 hours of interpretation for 9,320 persons with hearing deficiencies in 2017)
- providing people with hearing deficiencies with medical hearing devices and prostheses (428 persons received prostheses in 2017) ;
- access of students with disabilities to schools/education facilities (primary, secondary and higher education as well as technical professional education) by building ramps/access ways and toilets or playground adapted to their needs;
- the legal framework to ensure free access of persons with disabilities to museums and libraries; as well as to touristic facilities;
- access of persons with disabilities to theatres and concert halls (e.g. full access is ensured in 5 places; partial access is ensured in 2 places and other 2 are going to build such access).

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<sup>9</sup> Conclusions XIV-2 (1998), United Kingdom

<sup>10</sup> Conclusions XIV-2 (1998), United Kingdom

The authorities also reminded that the Republic of Moldova ratified the UN Convention on the Rights of Persons with Disabilities by Law no. 166-XVIII of 09 July 2010. They also informed that by the Decree of the President of the Republic of Moldova No. 216 of 12 June 2017, the signing of the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities was approved. Moreover, the National Program for Social Inclusion of Persons with Disabilities 2017-2022, which was approved on 8 September 2017, provides for a cross-sectoral approach to the social inclusion of people with disabilities and ensuring respect for their fundamental rights in equal measure with other citizens in all areas of social life.

It was mentioned that the Ministry of Health, Labour and Social Protection, the Policy Department for the Protection of the Rights of Persons with Disabilities, collaborates effectively with several public associations, including: Alliance of Organizations of Disabled Persons (within the alliance there are 23 organizations active in promoting and respecting the rights of people with disabilities), A.O. "KEYSTONE Moldova", Association of Deaf of the Republic of Moldova, Society of the Blind People in the Republic of Moldova, etc., to which draft policies and draft laws referring to persons with disabilities are submitted for examination and approval .

### **Opinion of the Committee**

The Committee recalls that the right of persons with disabilities to social integration provided for by Article 15§3 implies that barriers to communication and mobility be removed in order to enable access to transport (land, rail, sea and air), housing (public, social and private), cultural activities and leisure (social and sporting activities).<sup>11</sup> To this purpose Article 15§3 requires:<sup>12</sup>

- the existence of comprehensive non-discrimination legislation covering both the public and private sphere in fields such as housing, transport, telecommunications and cultural and leisure activities and effective remedies for those who have been unlawfully treated. Such legislation may consist of general anti-discrimination legislation, specific legislation or a combination of the two.<sup>13</sup>
- the adoption of a coherent policy in the disability context: positive action measures to achieve the goals of social integration and full participation of persons with disabilities. Such measures should have a clear legal basis and be coordinated.

People with disabilities should have a voice in the design, implementation and review of such a policy.<sup>14</sup>

To give meaningful effect to this undertaking:

- Mechanisms must be established to assess the barriers to communication and mobility faced by persons with disabilities and identify the support measures that are required to assist them in overcoming these barriers.
- Technical aids must be available either for free or subject to an appropriate contribution towards their cost and taking into account the beneficiary's means. Such aids may for example take the form of prostheses, walkers, wheelchairs, guide dogs and appropriate housing support arrangements.
- Support services, such as personal assistance and auxiliary aids, must be available, either for free or subject to an appropriate contribution towards their cost and taking into account the beneficiary's means.

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<sup>11</sup> Conclusions 2005, Norway

<sup>12</sup> Conclusions 2007, Slovenia

<sup>13</sup> Conclusions 2012, Estonia

<sup>14</sup> Conclusions 2003, Italy



Telecommunications and new information technology must be accessible<sup>15</sup> and sign language must have an official status.<sup>16</sup>

Public transports (land, rail, sea and air), all newly constructed or renovated public buildings, facilities and buildings open to the public, and cultural and leisure activities should be physically accessible.<sup>17</sup>

The needs of persons with disabilities must be taken into account in housing policies, including the construction of an adequate supply of suitable, public, social or private, housing. Further, financial assistance should be provided for the adaptation of existing housing.<sup>18</sup>

In the light of these requirements, the Committee took note of the measures already in place or under way, concerning for example the provision of wheelchairs and other technical facilities for people with mobility disabilities as well as medical hearing devices and prostheses for people with hearing deficiencies. It also took note of the legal framework concerning the access of persons with disabilities to museums and libraries, touristic facilities as well as theatre and concert halls.

The Committee considered that there are no significant legal obstacles to the acceptance of Article 15§3 by the Republic of Moldova. More information would be needed on a number of issues, for example as to whether all relevant sectors of integration (housing, telecommunications, transport, leisure and cultural activities) are effectively covered by the anti-discrimination legislation; whether integration obstacles are being assessed and what measures are taken in terms of financial and technical support in order to ensure access in all fields of social life. The situation in practice with regard to the implementation of legal framework and dialogue/integration would be of importance in order to assess the extent to which the effective exercise of the right to independence, social integration and participation in the life of the community of persons with disabilities is ensured.

### ***Article 18 Right to engage in a gainful occupation in the territory of other States Parties***

#### ***Article 18§1 - Applying existing regulations in a spirit of liberality***

#### ***Article 18§2 - Simplifying existing formalities and reducing dues and taxes***

### **Situation in the Republic of Moldova**

Referring to Article 18, the authorities described the procedure and existing formalities for granting a work permit to foreign nationals. They further indicated that measures were adopted since 2017 with a view to simplify the timeframe and the documentation necessary for the issuance of the residence permit for work purposes ("*permis de sedere in scopuri de munca*"). In particular the authorities indicated that a single office deals with the documentation for granting the residence permit for work purposes and that there were reasonable deadlines (15 days to deal with the application; on average up to 25 days).

With regard to the fees, the authorities informed that the collection of consular fees is regulated by Law No. 242 of 24 September 2010 on consular fees which applies equally to citizens of the Republic of Moldova as well as to foreigners. There are some fees incurred only for the legalisation of the documentation such as notary fees. Exemption from payment of

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<sup>15</sup> Conclusions 2005, Estonia

<sup>16</sup> Conclusions 2003, Slovenia

<sup>17</sup> Conclusions 2003, Italy

<sup>18</sup> Conclusions 2003, Italy

consular fees shall be established in a mutual regime between States. Fees are applied on reciprocity/mutual basis with other States.

The authorities considered that the fees required are objective, necessary and standard (as established in any country and not abusive). Respectively, they can neither be reduced, nor abolished. Thus, the authorities stated that the system of collecting the consular fees is simplified and the reduction or abolition of such fees is not considered.

### **Opinion of the Committee**

The Committee provided information on aspects of interpretation and case law, pointing out that Article 18 applies to employees and the self-employed who are nationals of States which are party to the Charter. It also covers members of their family allowed into the country for the purposes of family reunion.<sup>19</sup>

Article 18 relates not only to workers already on the territory of the State concerned, but also to workers outside the country applying for a permit to work on the territory.<sup>20</sup>

The Committee's assessment of the degree of liberality used in applying existing regulations is based on figures showing the refusal rates for work permits. To this end, the figures supplied must be broken down by country and must also distinguish between first-time applications and renewal applications<sup>21</sup>. A high percentage of successful applications by nationals of States Parties to the Charter for work permits and for renewal of work permits and a low percentage of refusals has been regarded as a clear sign that existing regulations are being applied in a spirit of liberality.

Economic or social reasons might justify limiting access of foreign workers to the national labour market. This may occur, for example, with a view to addressing the problem of national unemployment by means of favouring employment of national workers. However, the implementation of such policies limiting access of third-country nationals to the national labour market, should neither lead to a complete exclusion of nationals of non-EU (or non-EEA) States parties to the Charter from the national labour market, nor substantially limit the possibility for them of acceding the national labour market.<sup>22</sup>

Formalities concerning the issuance of work and residence permits must be simplified.<sup>23</sup> With regard to the formalities to be completed, conformity with Article 18§2 presupposes the possibility of completing such formalities in the country of destination as well as in the country of origin<sup>24</sup> and obtaining the residence and work permits at the same time and through a single application.<sup>25</sup> It also implies that the documents required (residence/work permits) will be delivered within a reasonable time.<sup>26</sup>

Chancery dues and other charges for the permits in question must not be excessive<sup>27</sup> and, in any event, must not exceed the administrative cost incurred in issuing them.<sup>28</sup> States must, first of all, not set an excessively high level for the dues and charges in question that is a level likely to prevent or discourage foreign workers from seeking to engage in a gainful

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<sup>19</sup> Conclusions X-2 (1990), Austria

<sup>20</sup> Conclusions XIII-1 (1993), Sweden

<sup>21</sup> Conclusions XVII-2 (2005), Spain

<sup>22</sup> Conclusions 2012, Statement of Interpretation of Article 18§1 and 18§3

<sup>23</sup> Conclusions XX-1(2012), Greece

<sup>24</sup> Conclusions XVII-2, Finland

<sup>25</sup> Conclusions XVII-2, Germany

<sup>26</sup> Conclusions XVII-2, Portugal

<sup>27</sup> Conclusions 2012, Ireland

<sup>28</sup> Conclusions 2012, Armenia

occupation, and employers from seeking to employ foreign workers. They should make concrete efforts to progressively reduce their level.<sup>29</sup>

In the light of these requirements, the Committee considered that the Republic of Moldova could accept Article 18 §1. The figures showing the implementation of the quota in practice and the refusal rates for work permits would be essential in assessing the situation in practice. To this aim, there should be efficient data collection mechanisms.

With regard to Article 18§2, the Committee considered that the applicable procedure seemed to comply with the Charter and thus there were no obstacles to the acceptance of this provision by the Republic of Moldova. Further information with regard to the level of fees in respect of foreigners wishing to access the labour market as self-employed would be needed.

The Committee accordingly recommended acceptance of both Articles 18§1 and Article 18§2.

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

#### **Situation in the Republic of Moldova**

The authorities informed that the Insolvency Law No. 149 of 29 of June 2012 provides for the payment of employees' claims in case of insolvency of their employer (Article 43 of the Insolvency Law). Under this Law, employees are unsecured creditors ("*creditori chirografari*").

The authorities further informed that amendments to the Insolvency Law were being discussed by the social partners. Two scenarios were discussed by the National Commission on consultation and collective negotiation so that the workers' claims are guaranteed either through a privilege system (and accordingly the Law must be amended to this purpose) or through a guarantee fund (to be created with this purpose). In parallel, with the support of the World Bank experts, the draft law on the amendment of the Law no. 149 of 29 June 2012 in which the opportunity and the actual conditions for inclusion of the above-mentioned changes will be examined.

The trade unions representative confirmed the ongoing discussions on the draft law so that it will be in line with the Romanian Law on Insolvency.

The employers' representative pointed out that employees' claims will be guaranteed, but it is to be seen what are the mechanisms for that – whether it will be a guarantee fund or how the law will be implemented.

#### **Opinion of the Committee**

The Committee recalls that Article 25 of the Charter guarantees individuals the right to protection of their claims in the event of the insolvency of their employer. States Parties having accepted this provision benefit from a margin of discretion as to the form of protection of workers' claims and so Article 25 does not require the existence of a specific guarantee institution.

However, the protection afforded, whatever its form, must be adequate and effective, also in situations where the assets of an enterprise are insufficient to cover salaries owed to

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<sup>29</sup> Statement of Interpretation of Article 18§2, 2012

workers<sup>30</sup>. Guarantees must exist for workers that their claims will be satisfied in such cases.<sup>31</sup> The protection should also apply in situations where the employer's assets are recognised as insufficient to justify the opening of formal insolvency proceedings.<sup>32</sup>

A privilege system, on its own cannot be regarded as an effective form of protection in situations where there is no alternative to it and alone it cannot provide effective guarantee of protection, due to the fact that the employer has no assets.<sup>33</sup> <sup>34</sup> The Committee has found that a privilege system where workers' claims were ranked below mortgage obligations, foreclosure on property and bankruptcy costs did not amount to an effective protection under the Charter.<sup>35</sup> In order to demonstrate the adequacy in practice of the protection, States Parties must provide information, inter alia, on the average duration of the period from a claim is lodged until the worker is paid<sup>36</sup> <sup>37</sup> and on the overall proportion of workers' claims which are satisfied by the guarantee institution and/or the privilege system.<sup>38</sup>

States Parties may limit the protection of workers' claims to a prescribed amount. Domestic laws or regulations may limit the protection of workers' claims to a prescribed amount which shall be of a socially acceptable level, namely not less than three months wage under a privilege system and eight weeks under a guarantee system. The workers' claims covered should also include holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred.<sup>39</sup>

Certain categories of employees may, exceptionally, be excluded from Article 25 protection because of the special nature of their employment relationship. The assessment of the conformity of such exclusion is done on a case-by-case basis.

In the light of these requirements, the Committee took note with interest of the ongoing discussions on amending the Insolvency Law with a view to guarantee the protection of workers in the event of the insolvency of their employer and encouraged the Republic of Moldova to take the requirements of Article 25 of the Charter into account when preparing, enacting and implementing the new law/amendments. In this perspective, the Committee invited the Republic of Moldova to continue its consideration of this provision with a view to its possible acceptance in the near future.

#### **1. Thematic Group 2 Health, social security and social protection: Article 3 - Article 11 - Article 12 - Article 13 - Article 14 - Article 23 - Article 30**

During the previous meeting on non-accepted provisions, it was considered that the following provisions could be accepted by the Republic of Moldova: Article 3§4, Article 14§1 and Article 14§2. Thus, the provisions discussed under the current examination were: Article 13§4, Article 23, Article 30.

#### **Article 13§4 Right to social and medical assistance - Specific emergency assistance for non-residents**

##### **Situation in the Republic of Moldova**

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<sup>30</sup> Conclusions 2003, France

<sup>31</sup> Conclusion 2012, Ireland

<sup>32</sup> Conclusions 2008, Slovenia

<sup>33</sup> Conclusions 2012, Statement of Interpretation Article 25

<sup>34</sup> Conclusions 2012, Albania

<sup>35</sup> Conclusions 2003, Bulgaria

<sup>36</sup> Conclusions 2003, Sweden

<sup>37</sup> Conclusions 2012, Lithuania

<sup>38</sup> Conclusions 2012, Serbia

<sup>39</sup> Conclusions 2012, Slovakia

The authorities informed that the categories specified in Article 2 paragraph (1) lit. a) -f) of Law No. 274 of 27 December 2011 on the integration of foreigners in the Republic of Moldova such as foreigners holding the temporary residence right for family reunification, foreigners with the right of temporary residence for work purposes, foreigners with the right of temporary residence for studies, foreigners holding the temporary residence right for humanitarian or religious activities, foreigners holding the right of permanent residence, persons who have been recognized as stateless in the Republic of Moldova, have the same rights and obligations in the field of health insurance as well as citizens of the Republic of Moldova, according to the legislation in force, unless the international treaties stipulate otherwise.

Foreigners who are beneficiaries of a form of protection included in an integration program benefit of medical insurance provided by the state during the period of its implementation (Article 4 (4) (o) of Law No. 1585-XIII of 27 February 1998).

The authorities further emphasised that for uninsured persons, urgent pre-hospital medical assistance and primary care is granted in the volume established by the Single Programme ("Programul unic"), including the prescription of medicines compensated according to the laws in force, without payment for the provision of these services.

Uninsured persons who suffer from illnesses that could have a major impact on the public health (such as tuberculosis, HIV/SIDA, hepatitis A, alcoholism etc) shall benefit from investigations/screening, consultations and free-of-charge care at the hospital, including post-therapeutic surveillance at specialist doctors and family doctors.

### **Opinion of the Committee**

The Committee recalls that Article 13§4 of the Charter grants non-resident foreign nationals (lawfully present on the territory of Republic of Moldova and without resources) entitlement to emergency social and medical assistance.

Through a Statement of Interpretation on Articles 13§1 and 13§4<sup>40</sup> regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee stated that persons in an irregular situation in the territory of the State concerned are covered under Article 13§1, rather than under Article 13§4, which was previously its practice. The Committee therefore brought clarifications as regards the personal scope of both Articles 13§1 and 13§4. It henceforth examines whether the States who have accepted Article 13§1 ensure the right to: (i) adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing; and (ii) emergency social and medical assistance to persons unlawfully present in their territory.<sup>41</sup>

The obligation to provide emergency social and medical assistance to foreign nationals in an irregular situation, which was an obligation under Article 13, paragraph 4, will henceforth be an obligation under Article 13, paragraph 1.

Therefore, Article 13§4 from now on will cover emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory without resources (such as tourists, students and other categories who are lawfully present in the territory).

With regard to the content of emergency assistance, States Parties are required to provide non-resident foreigners, without resources, with emergency social and medical assistance. Such assistance must cover accommodation, food, clothing and emergency medical

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<sup>40</sup> Conclusions 2013, Statement of Interpretation on Article 13§1 and 13§4

<sup>41</sup> Conclusions 2017, Article 13§1, Republic of Moldova

assistance, to cope with an urgent and serious state of need (without interpreting too narrowly the 'urgency' and 'seriousness' criteria).<sup>42 43 44 45 46</sup> No condition of length of presence can be set on the right to emergency assistance.<sup>47</sup>

In the light of these requirements and in particular in view of the Statement of Interpretation mentioned above, the Committee considered that there were no obstacles to the acceptance of Article 13§4 by the Republic of Moldova. Further information would be needed with regard to emergency social assistance (such as shelter, food and clothing) available to non-resident foreign nationals, lawfully present on the territory of Republic of Moldova and without resources.

### **Article 23 Right of the elderly to social protection**

#### **Situation in the Republic of Moldova**

The authorities informed that through Government Decision No.1147 of 20 December 2017 a new Action Plan on the implementation of the principle of active aging (2018-2021) was approved, which will contribute to increase the participation of the elderly in the decision-making process, increase the productive employment of elderly people on the labour market, and increase access and the quality of education and vocational qualification services for the elderly, etc. Successful implementation of the Action Plan will allow older people to remain as full members of society as much as possible.

The authorities further informed that pensions system was reformed in 2017 and now the minimum pension is established in relation to the minimum guaranteed monthly income. In the context of establishing the minimum pension according to the new formula, the same amount of the minimum pension was set for the national economy as well as for agriculture. It is reported that on average, as a result of valorisation, the average pension increased by 281.67 lei for old-age pensions and 351.18 lei for disability pensions.

By Order of the Ministry of Health No. 469 of 25 December 2007 on the creation of the National Center of Geriatrics and Gerontology, starting with 2008, under the Clinical Hospital of the Ministry of Health was founded the National Center of Geriatrics and Gerontology with 40 beds and the Scientific Laboratory of Gerontology.

In order to establish and carry out the geriatric service throughout the country, by Order of the Ministry of Health No. 502 of 25 December 2008 on the organisation of geriatric healthcare in the Republic of Moldova, 386 short-term geriatric beds (up to 14 days) served by 39.5 medical units were carried out in all district and municipal hospitals geriatrics, and specialized ambulatory care is provided by 38.5 GPs. In Chisinau municipality in 2011 were founded two more geriatric departments - 70 beds based on Municipal Clinical Hospital no. 4.

As a result of the hospital reform in about 20 district hospitals, geriatric sections of 30-40 medium-length geriatric beds (1-4 months) are open to elderly patients with dependent, frag-

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<sup>42</sup> Conclusions XIV-1 (1998), Netherlands

<sup>43</sup> Conclusions XX-2 (2013), Czech Republic

<sup>44</sup> *Médecins du Monde – International v. France*, complaint No. 67/2011, decision on the merits of 11 September 2012: §178

<sup>45</sup> *Conference of European Churches (CEC) v. the Netherlands* Complaint No. 90/2013, decision on the merits of 1 July 2014, §105

<sup>46</sup> *European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands*, decision on the merits of 2 July 2014, §171

<sup>47</sup> *European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands*, Complaint No 86/2012, decision on the merits of 2 July 2014, §171

ile, solitary chronic polypathologists, requiring geriatric care. Primary care institutions in partnership with HomeCare NGO, HelpAge, Angelus Moldova are providing home care services for elderly people in multidisciplinary teams.

### **Opinion of the Committee**

The Committee provided information on aspects of interpretation and case law, pointing out that one of the primary objectives of Article 23 is to enable elderly persons to remain full members of society. The expression “full members” means that elderly persons must suffer no ostracism on account of their age. The right to take part in society’s various fields of activity should be granted to everyone active or retired, living in an institution or not.

The Committee recalled that an adequate legal framework must exist to combat age discrimination not only in employment (as required under Articles 1§2 and 24), but also in a range of areas beyond employment, namely in access to goods, facilities and services, healthcare, education, services such as insurance and banking products, participation in policy making/civil dialogue, allocation of resources and facilities.

The national legal framework must provide appropriate safeguards to prevent the arbitrary deprivation of autonomous decision making by elderly persons, also in case of reduced decision making capacity. It must be ensured that the person acting on behalf of elderly persons interferes to the least possible degree with their wishes and rights<sup>48</sup>.

Under Article 23, the State should adopt or encourage, either directly or in co-operation with public or private organisations appropriate measures with a view to enabling elderly persons to remain full members of society for as long as possible. Such measures relate respectively to the provisions of adequate resources and of information on services and facilities.

When examining the adequacy of resources of elderly persons under Article 23, the Committee takes into account all social protection measures provided for elderly persons, aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources are then compared with median equivalised income. However, the Committee points out that its task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, the Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over. The Committee also takes into consideration the cost of transport as well as the cost of medical care and medicine, as well as the existence of a carer’s allowance for family members looking after an elderly relative.

Article 23 also requires States Parties to take appropriate measures against elder abuse. States Parties must therefore take measures to evaluate the extent of the problem, to raise awareness on the need to eradicate elder abuse and neglect, and adopt legislative or other measures.<sup>49</sup>

The Committee asked, *inter alia*, what had been done to assess the extent of the problem and raise awareness on the need to eradicate elder abuse and neglect, and if any legislative or other measures had been taken or were planned in this area.<sup>50</sup>

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<sup>48</sup> Conclusions 2013, Statement of Interpretation Article 23

<sup>49</sup> Conclusions 2009, Andorra

<sup>50</sup> Conclusions 2017, Ukraine

As regards services and facilities, the Committee examines not only that information in this respect is available to elderly people, but also the services and facilities themselves. In particular, information is sought on the existence, extent and cost of home help services, community based services, specialised day care provision for persons with dementia and related illnesses and services such as information, training and respite care for families caring for elderly persons, in particular, highly dependent persons, as well as cultural leisure and educational facilities available to elderly persons. Additionally States Parties must have a system for monitoring the quality of services and a procedure for complaining about the standard of services.<sup>51</sup> Insufficient regulation of fees for services may amount to a violation of Article 23.<sup>52</sup>

The needs of elderly persons must be taken into account in national or local housing policies. The supply of adequate of appropriate housing for elderly person must be sufficient. Housing law and policy must take account of the special needs of this group. Policies should help elderly persons to remain in their own homes for as long as possible through the provision of sheltered/supported housing and assistance for the adaptation of homes.<sup>53</sup>

In the context of a right to adequate health care for elderly persons Article 23 requires that health care programmes and services (in particular primary health care services including domiciliary nursing/health care services) specifically aimed at the elderly must exist together with guidelines on healthcare for elderly persons. In addition, there should be mental health programmes for any psychological problems in respect of the elderly, and adequate palliative care services.<sup>54</sup> Nutrition issues for elderly people should also be given appropriate attention and any information in this respect would be useful.

Elderly persons living in institutions should be guaranteed the right to appropriate care and adequate services, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the institution, the protection of property, the right to maintain personal contact with persons close to the elderly person and the right to complain about treatment and care in institutions.<sup>55</sup> There should be a sufficient supply of institutional facilities for elderly persons (public or private), care in such institutions should be affordable and assistance must be available to cover the cost. All institutions must be licensed or approved and an independent inspection mechanism must exist to examine, in particular, the quality of care delivered. In particular, information would be needed as regards the monitoring of private social care providers.

In view of these requirements, the Committee noted that a number of measures were already in place or being developed, but considered that more detailed information on specific issues remained needed to assess the compatibility of the situation in the Republic of Moldova with Article 23 requirements. In particular, further information was needed to clarify:

- whether anti-discrimination legislation effectively covers non-discrimination on grounds of age in access to goods and services, either explicitly in the law or through its interpretation in the case-law, thus ensuring also the existence of effective remedies;
- whether there are appropriate safeguards against elderly abuse and arbitrary interference and deprivation of autonomous decision making in case of reduced capacity.

The Committee also noted that further information was needed in respect of the services and facilities addressed at elderly people, in order to assess whether such services are sufficient-

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<sup>51</sup> Conclusions 2009 Andorra

<sup>52</sup> The Central Association of Carers in Finland v. Finland Complaint No 71/2011 decision on the merits of 4 December 2012.

<sup>53</sup> Conclusions 2013, Andorra

<sup>54</sup> Conclusions 2003, France

<sup>55</sup> Conclusions 2003, Slovenia and Conclusions 2003, France



ly numerous, qualitatively adequate, affordable and accessible and whether effective remedies exist to complain in this respect. Specific information is required as regards not only in respect of elderly people living in institutions (as to whether they get appropriate care and services, whether there is a sufficient supply of affordable care and whether the quality of the services is monitored) but also in respect of those living at home (as to the housing and healthcare measures taken to ensure that they can continue living home as long as possible). The Committee invited the Republic of Moldova to continue its consideration of this provision with a view to its possible acceptance in the near future.

### ***Article 30 The right to protection against poverty and social exclusion***

#### **Situation in the Republic of Moldova**

The authorities reported that in 2016, the absolute poverty rate (the share of the population below the absolute poverty line in the total population) constituted 25.6% and decreased by 2.8 percentage points compared to 2014. Considering that in 2016 the population of the Republic Moldova constituted 3,551.9 thousand people, the number of the poor in the country reached 909.3 thousand people.

It was further indicated that the extreme poverty rate (the share of the population that is below the extreme poverty line in the total population) is of low value. In 2016, the extreme poverty rate was only 0.6% and its value remained unchanged in 2015. Considering the fact that in 2016 the population of the Republic of Moldova constituted 3,551.9 million people, the number of extremely poor people in the country reached 21.3 thousand people.

[The absolute poverty line is defined as the monthly value of consumer spending needed to meet the minimum human needs in food, goods and services (in 2016, the absolute poverty line was at 1852.4 MDL). The extreme poverty line is defined as the monetary value of the monthly food basket, the content of which provides a minimum calorific value of 2400 kcal per day, adjusted to the equivalent adult (in 2016 it was 931.2 MDL).]

#### **Opinion of the Committee**

The Committee provided information concerning interpretation and case law, drawing attention to the fact that, while Article 30 is closely linked to other provisions of the Charter (in particular Articles 1, 9, 10, 12, 13, 14 and 31 as well as Article E), which are accordingly taken into account when assessing conformity with Article 30. This approach does not mean that a conclusion of non-conformity or a decision of violation of one or several of these provisions automatically or necessarily lead to a violation of Article 30<sup>56</sup>; but such a conclusion or decision may, depending on the circumstances, be relevant in assessing conformity with Article 30.

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion Article 30 requires States Parties to adopt an overall and coordinated approach, which shall consist of an analytical framework, a set of priorities and corresponding measures to prevent and remove obstacles to access to social rights as well as monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. It must link and integrate policies in a consistent way moving beyond a purely sectoral or target group approach. Normally, some sort of coordinating mechanisms, including at the level of delivery of assistance and services to those living in or at risk of poverty, should be provided. At the very least, States Parties should demonstrate that

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<sup>56</sup> *EUROCEF v. France*, Complaint No. 82/2012, decision on the merits of 19 March 2013, para. 59

poverty and social exclusion reduction is an embedded aspect of all the relevant strands of public policy.

The measures taken for such a purpose must promote and remove obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance. The measures should strengthen access to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions. Positive measures for groups generally acknowledged to be socially excluded or disadvantaged must be adopted by States Parties. Access to fundamental social rights is assessed by taking into consideration the effectiveness of policies, measures and actions undertaken.

As long as poverty and social exclusion persist, adequate resources should be deployed and increased to make social rights possible. The economic crisis should not have, as a consequence, a reduction in the protection of vulnerable persons. The measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned. In this respect the definitions and measuring methodologies applied at the national level and the main data made available are systematically reviewed. The at-risk-of-poverty rate before and after social transfers (Eurostat), is used as a comparative value to assess national situations.

In particular, the Committee has interpreted the scope of Article 30 as relating both to: (i) protection against poverty (understood as involving situations of social precarity) and (ii) protection against social exclusion (understood as involving obstacles to inclusion and citizen participation), in an autonomous manner or in combination with other connecting provisions of the Charter.<sup>57</sup>

In view of these requirements, the Committee considered that the Republic of Moldova still faces some challenges as regards the requirements of this provision, some of them being insufficient financial means and insufficient coordination. The Committee invited the Republic of Moldova to pursue its efforts and to continue considering the acceptance of this provision in the near future.

## **2. Thematic Group 3 Labour rights: Article 2 - Article 4 - Article 5 - Article 6 - Article 21 - Article 22 - Article 26 - Article 28 - Article 29**

During the previous meeting on non-accepted provisions, it was considered that the following provisions could be accepted by the Republic of Moldova: Article 4§2 and Article 22. Thus the provision discussed under the current examination was: Article 4§1

### **Article 4§1 The right to a fair remuneration – Decent remuneration**

#### **Situation in the Republic of Moldova**

The authorities informed that the minimum wage was 1.000 MDL (= Euro) which was below of the minimum subsistence level. The Law No. 1432-XIV of 28 December 2000 on the Setting and Review of the Guaranteed Minimum Wage sets the national minimum wage at 1,000 Moldovan lei (MDL) (which corresponds to approximately 50 Euros).

The salaries for public servants (“budgetary sector”) are established by Law No. 355 of 23 December 2005 on Pay System in the Budgetary Sector. The salary system for the public

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<sup>57</sup> Statement of interpretation on Article 30, Conclusions 2013

sector (referred to as the “budgetary sector) differs from the salary system in the private sector (referred to as the “real sector”).

[Under the terms of Law No. 847 of 14 February 2002 the guaranteed minimum wage for the private sector included “additional” payments. However, an amendment introduced on 17 November 2016 (Law No. 253) changed the basis for calculating the minimum wage by excluding additional compensatory payments for overtime work, night shifts, work at weekends or public holidays, and compensation for nonstandard forms of work.]

The representative of the Ombudsman recalled that in their annual reports had recommended to the Republic of Moldova to ratify Article 4§1 of the Charter in order to ensure a better implementation of social rights. She referred to the low level of the minimum wage (1000 MDL) and the fact that there was no indexation of salaries while prices were increased.

The representative of the Ombudsman pointed out that the UN Committee on Economic, Social and Cultural Rights (CESCR) in its Concluding observations of July 2011 recommended to the Republic of Moldova to increase its efforts to guarantee that the national minimum wage is sufficient to ensure an adequate standard of living for workers and their families. The CESCR also reiterated its recommendations that the State party introduce a mechanism to determine and regularly adjust the minimum wage in proportion to the cost of living.<sup>58</sup>

According to the Ministry of Economy, in the real sector the threshold required by the Charter was achieved.

### **Opinion of the Committee**

Article 4§1 guarantees the right to a fair remuneration such as to ensure a decent standard of living. It applies to all workers, including to civil servants and contractual staff in the state, regional and local public sectors, to branches or jobs not covered by collective agreement, to atypical jobs (assisted employment), and to special regimes or statuses (minimum wage for migrant workers).

The concept of “decent standard of living” goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities.

To be considered fair within the meaning of Article 4§1, the minimum or lowest net remuneration or wage paid in the labour market must not fall below 60% of the net average wage. Beyond 60% the Committee presumes that the situation is fair within the meaning of the Charter. When the net minimum wage is between 50 and 60% of the net average wage, it is for the state to establish whether this wage is sufficient to ensure a decent standard of living. However, a net wage which is less than 50% of the net national average wage will be deemed to be unfair and therefore the situation of the Party concerned will not be in conformity with Article 4§1.

To be considered fair within the meaning of Article 4§1, remuneration must in any event be above the poverty line in a given country.

Remuneration relates to the compensation – either monetary or in kind – paid by an employer to a worker for time worked or work done. It covers, where applicable, special bonuses

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<sup>58</sup> UN CESCR, Concluding observations on the Republic of Moldova, July 2011, available at: <http://www.refworld.org/publisher,CESCR,,MDA,5881dd4e14,0.html>

and gratuities. The assessment is based on net amounts, i.e. after deduction of taxes and social security contributions. Where net figures are difficult to establish, it is for the State Party concerned to conduct the needed enquiries or to provide estimates.

The Committee noted that the Government of Moldova adopted a decision to increase the guaranteed minimum wage in the real economy by 230 lei (approx. 14 USD) up to 2610 lei (approx. 157 USD). The change was expected to enter into force from 1 May 2018.<sup>59</sup>

The Committee further noted that the International Labour Organisation (ILO) recommended that a consolidation of the laws and various decisions on guaranteed minimum wages with one law clarifying when and why the two minimum amounts specified in law (i.e. MDL 1,000 and MDL 2,100, revised to MDL 2,380 in 2017) are applied. The recommendation would be to have only one minimum wage covering both budgetary and private sectors.<sup>60</sup>

In view of these requirements, the Committee took note of the efforts already made by the Republic of Moldova to increase the minimum wage. The Committee is of the view that the principle underpinning Article 4§1 deserves the highest consideration and that the choice of whether or not to accept this provision should be more political than strictly legal. The question is whether the State considers that a principle protecting such a fundamental right is important and that a goal such as a fair wage must be pursued and achieved, or not.

The Committee was of the opinion that legislative and political changes seemed required to bring the situation into conformity with the Charter but that acceptance should be considered in view of the importance of this provision. Thus, the Committee encouraged the Government to pursue its efforts and to continue considering the acceptance of Article 4§1 in the near future.

### **3. Thematic Group 4 Children, families, migrants: Article 7 - Article 8 - Article 16 - Article 17 - Article 19 - Article 27 - Article 31**

During the previous meeting on non-accepted provisions, it was considered that the following provisions could be accepted by Republic of Moldova: Article 7§6, Article 19§1, Article 19§3, Articles 19§4 (a) and (b), Article 19§5, Article 19§9 and Articles 27§1 and 27§3.

Thus the provisions discussed under the current examination were: Article 7§5, Article 19§2, Article 19§4 (c), Article 19§6, Article 19§10, Article 19§11, Article 19§12, Article 31.

#### ***Article 7.5 Right of children and young persons to protection - Fair pay***

##### **Situation in Republic of Moldova**

The authorities informed that the Government Decision No. 70 of 22 January 2018 established the Rules on the organisation of technical vocational training programmes through dual education. The notion of apprenticeship (“*ucenicia*”) was introduced and the “apprentice in dual education” was defined as a student who has been enrolled in studies under authorised and accredited dual education programmes and has concluded an apprenticeship agreement with an economic agent (Section 3 of the Decision).

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<sup>59</sup> Information available at: <http://www.moldova.org/en/moldova-government-increases-guaranteed-minimum-wage-2610-lei-157/>

<sup>60</sup> ILO, Wage regulations and practices in the Republic of Moldova, 2017 available at: [http://www.oit.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/publication/wcms\\_615687.pdf](http://www.oit.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/publication/wcms_615687.pdf)

According to this Decision, the apprentice is granted annual paid holiday, with a minimum of 28 calendar days, except for non-working holidays. The apprentice benefits from vacation paid during the holidays, according to the framework plan approved by the Ministry of Education, Culture and Research. If the period of vacations exceeds the duration of the annual leave, it may be granted unpaid leave, in accordance with the legislation in force.

During the studies, the apprentice benefits from: (i) monthly scholarship, according to the normative framework in force; (2) compulsory medical insurance; (3) social insurance in cases provided by law; (4) apprenticeship allowance paid by the economic agent, which represents not less than 2/3 of the minimum guaranteed salary in the 'real sector' (private sector); (5) accommodation in the home of the technical vocational education institution, if it has a dormitory.

It was reported that the vocational training through dual education was extended to 21 programmes. Within these programmes, dual training is achieved through the cooperation of 19 technical vocational education institutions with 43 economic entities.

### **Opinion of the Committee**

The Committee recalls that in application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices appropriate allowances. This right may result from statutory law, collective agreements or other means. The "fair" or "appropriate" character of the wage is assessed by comparing young workers' remuneration with the starting wage or minimum wage paid to adults (aged 18 or above).

The young worker's wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly. For fifteen/sixteen year-olds, a wage of 30% lower than the adult starting wage is acceptable. For sixteen/eighteen year-olds, the difference may not exceed 20%. The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair.

In the light of these requirements, the Committee considered that there was no legal obstacle to the acceptance of this provision. Further information on the implementation of the legislation in practice would be needed in order to assess the situation in the Republic of Moldova.

### **Article 19§2**

#### **Situation in the Republic of Moldova**

Information was provided with regard to facilitating the departure, transport and provision of certain sanitary and health services during the journey only to migrant workers employed on the basis of bilateral agreements (for example, the implementation of the Agreement with the State of Israel).

Priority of documentation is given when foreign workers work on projects (in an organised manner). All conditions, including medical condition, are the responsibility of the employer, and not that of the state.

As regards foreign workers (immigrants), the transport, travel and services are the responsibility of the employer who invites the worker concerned. Public authorities cannot bear the financial burden of implementing these provisions in cases other than those provided for in the bilateral Agreements.

At the same time, these conditions (related to the responsibility of the employer to ensure the decent travel conditions and the provision of transport services, health, etc.) comply with the provisions of the UN Convention No. 97 Migration for Employment, ratified by the Republic of Moldova in 2001.

The authorities informed that, in general, migrants and their families benefit from the same medical package as the uninsured persons in the Republic of Moldova. For uninsured persons, urgent pre-hospital medical assistance and primary care is granted in the volume established by the Single Programme ("Programul unic"), including the prescription of medicines compensated according to the laws in force, without payment for the provision of these services.

Uninsured persons who suffer from illnesses that could have a major impact on the public health (such as tuberculosis, HIV/SIDA, hepatitis A, alcoholism etc) shall benefit from investigations/screening, consultations and free-of-charge care at the hospital, including post-therapeutic surveillance at specialist doctors and family doctors.

### **Opinion of the Committee**

Article 19§2 of the Charter obliges States Parties to adopt special measures for the benefit of migrant workers, beyond those which are provided for nationals to facilitate their departure, journey and reception.

Reception must include not only assistance with regard to placement and integration in the workplace, but also assistance in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures. Reception means the period of weeks which follows immediately from their arrival, during which migrant workers and their families most often find themselves in situations of particular difficulty.

The obligation to "provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey" relates to migrant workers and their families travelling either collectively or under the public or private arrangements for collective recruitment. This aspect of Article 19§2 does not apply to forms of individual migration for which the state is not responsible. In such cases, the need for reception facilities would be all the greater.

In the light of these requirements, the Committee considered that there was no major obstacle to acceptance of Article 19§2. [Further information is needed concerning whether there is a service for migrant workers that would provide assistance with regard to overcoming difficulties upon arrival.]

### ***Article 19§4 c Equality regarding employment, right to organise and accommodation***

#### **Situation in the Republic of Moldova**

As regards accommodation (which is the object of Article 19§4 c), the authorities informed that foreigners are entitled to buy or rent dwellings on their own, without any assistance from the state in this sense.

### **Opinion of the Committee**

Article 19§4 guarantees non-discrimination of migrant workers with respect to: (a) remuneration and other employment and working conditions, (b) trade union membership and the enjoyment of benefits of collective bargaining, and (c) **accommodation**.

As regards **accommodation**, the undertaking of States Parties is to eliminate all legal and *de facto* discrimination concerning access to public and private housing.

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

The right to equal treatment provided in Article 19§4(c) can only be effective if there is a right of appeal before an independent body against the relevant administrative decisions.

In the light of these requirements, the Committee considered that some further developments/measures are needed in order to ensure that no legal or *de facto* restrictions on home-buying, access to subsidised housing or housing aids, such as loans or other allowances exist for migrant workers. The Committee invited the Republic of Moldova to continue its consideration of this provision with a view to its possible acceptance in the near future.

### ***Article 19§6 Right of migrant workers and their families to protection and assistance – Family reunion***

#### **Situation in the Republic of Moldova**

The authorities indicated that the Law No. 200 of 16 July 2010 on Foreigners provides for the conditions and procedure for granting the family reunification to a migrant worker's family (spouse, minor children requiring parental care). There is no impediment to reunite the family.

It has also been mentioned that in these cases the support and assistance of the family members (for education, health, etc.) from the state is very low.

#### **Opinion of the Committee**

The Committee recalls that 19§6 obliges States Parties to allow the families of migrants legally established in their territory to join them. The worker's children entitled to family reunion are those who are dependent and unmarried, and who fall under the legal age of majority in the receiving State. "Dependent" children are understood as being those who have no independent existence outside the family group, particularly for economic or health reasons, or because they are pursuing unpaid studies.<sup>61</sup>

In the light of these requirements and the information provided by the authorities, the Committee considered that there were no obstacles to the acceptance of Article 19§6 by the Republic of Moldova.

### ***Article 19§10 – Equal treatment for the self-employed***

#### **Situation in the Republic of Moldova**

The authorities informed that workers of EU member states have the possibility to engage activities as self-employed on the Moldavian market.

#### **Opinion of the Committee**

The Committee explained that this provision required States Parties to extend the rights provided for in paragraphs 1 to 9, 11 and 12 to self-employed migrant workers and their fami-

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<sup>61</sup> Conclusions VIII (1984) Statement of Interpretation on Article 19§6

lies. States Parties must ensure that there is no unjustified treatment which amounts to discrimination, in law or in practice between wage-earners and self-employed migrants.

In addition equal treatment between self-employed migrants and self-employed nationals must be guaranteed in the areas covered by this provision. The Committee pointed out that a finding of non-conformity under paragraphs 1 to 9, 11 and/or 12 of Article 19 may lead to a finding of non-conformity under paragraph 10, but not necessarily so (for example where the finding of non-conformity concerns exclusively the situation of dependent workers).

In the light of these requirements, the Committee considered that to the extent that there is otherwise no unjustified treatment in law and in practice amounting to discrimination between wage-earners and self-employed migrants or between self-employed migrants and self-employed nationals, the Republic of Moldova could consider accepting this provision on reasons of principle. It accordingly recommended its acceptance.

### ***Article 19§11 – Teaching language of the host state***

#### **Situation in the Republic of Moldova**

The authorities informed that within the Sectoral Expenditure Strategy (2019-2021), education includes the following actions:

- providing Romanian language courses for foreigners (Law No.274 of 27 December 2011);
- expanding the actions of the national program for improving the quality of the learning of the Romanian language by children and students who do not currently use the Romanian language (called “*alolingvi*”).

The authorities informed that there is collaboration with the Ministry of Education for teaching Romanian language to foreigners. There are free language courses for refugees, while for others costs for language courses are incurred. Associations/NGOs are also involved in the learning/studying of Romanian language.

#### **Opinion of the Committee**

Under Article 19§11, States Parties must promote and facilitate the teaching of the national language to children of school age, as well as to the migrants themselves and to members of their families who are no longer of school age.

It follows that teaching the language to children and pupils in the school system as part of the ordinary curriculum is an essential element in satisfying the obligations laid down by Article 19§11, however it is not enough: there must also be measures taken in favour of family members who are not subject to compulsory school.

A requirement to pay substantial fees for language courses is not in conformity with the Charter. Minor registration or administrative fees might be acceptable, but the actual tuition/teaching should be free of charge. This case law was confirmed most recently in Conclusions 2015 (Conclusions 2015, the Netherlands).

In the light of these requirements, the Committee considered that there was no major obstacle to acceptance by the Republic of Moldova of this provision. More detailed information on the situation of adult family members and the extent to which language training for this group is provided/the costs incurred would be needed.



## **Article 19§12**

### **Situation in the Republic of Moldova**

Concerning the mother tongue of foreigners, it was mentioned that summer camps are organised with the support of NGOs, but there are no legal provisions in this respect.

### **Opinion of the Committee**

Under this provision States Parties undertake to promote and facilitate the teaching, in schools or other structures, such as voluntary associations, of those languages that are most represented among migrants within their territory.<sup>62 63</sup>

States Parties should promote and facilitate the teaching of the languages most represented among the migrants present on their territories within their school systems or in other contexts such as voluntary associations or non-governmental organisations.<sup>64</sup>

The Committee took note of the information concerning the existence of summer camps for teaching the mother tongue of migrants with the support of NGOs. It encouraged the Government to pursue their efforts and to continue considering the acceptance of Article 19§12 in the near future.

### **Articles 31§1, 31§2, 31§3 Right to housing – Adequate housing; Reduction of homelessness; Affordable housing**

#### **Situation in the Republic of Moldova**

The authorities provided information on the manner of assignment of social housing. According to the Government Decision No. 447 of 19 June 2017 "For the approval of the Regulation on the registration, the manner of assignment and use of social housing" (Article 38), social housing shall be offered to the eligible categories in the following proportions:

- 10% - for people with severe disabilities;
- 15% - to families with children (minors) with severe disabilities;
- 50% - to young families who do not have a dwelling;
- 15% - to families with triplets, quadruplets or more children were born simultaneously;
- 10% - to young people who have been declared without parental care before the age of 18 years or until they have full capacity, and who were never provided with social housing.

The authorities provided information concerning the eligibility conditions and procedure for the State Programme "The First House" (according to the Government Decision No.202 of 28 February 2018 on the approval of the Implementation Regulation of the State Programme "The First House").

### **Opinion of the Committee**

#### **Article 31§1 The right to housing - Adequate housing**

The Committee provided information on aspects of interpretation and case law, recalling that this provision requires States Parties to guarantee to everyone the right to adequate hous-

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<sup>62</sup> Conclusions 2002, Italy

<sup>63</sup> Conclusions 2011, Armenia

<sup>64</sup> Conclusions 2011, Statement of Interpretation on Article 19§12

ing. They should take positive measures and promote access to housing in particular in respect of the different groups of vulnerable persons, such as low-income persons, unemployed persons, single parent households, young persons, persons with disabilities including those with mental health problems as well as Roma people.

The law should define adequate housing, notably as:

- a dwelling which is safe from a sanitary and health point of view, i.e. that possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity, etc. and where specific dangers such as the presence of lead or asbestos are under control;
- a dwelling which has a size suitable to the number of persons and the composition of the household in residence;
- a dwelling with secure tenure supported by the law (this issue is covered by Article 31§2).

The definition of adequate housing must be applied not only to new constructions, but also gradually to the existing housing stock. It must also be applied to housing available for rent as well as to housing owner occupied housing. It is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also limit against the interruption of essential services such as water, electricity and telephone.

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

In view of these requirements, the Committee, while taking note of the information regarding the regulation on social housing and the "First House" programme, considered that further information on the legal situation and especially on practice was needed to allow it to properly assess the situation. It encouraged the Government to pursue their efforts and to continue considering the acceptance of Article 31§1 in the near future.

### ***Article 31§2 The right to housing - Reduction of homelessness***

The Committee provided information on aspects of interpretation and case law, pointing out that States must take action to prevent categories of vulnerable people from becoming homeless. They must set up procedures to limit the risk of eviction, i.e. the deprivation of housing which a person occupied due to insolvency or wrongful occupation. To this effect, evictions should be carried out in accordance with rules of procedure sufficiently protective of the rights of the persons concerned. Legal protection for persons threatened by eviction must include, in particular, an obligation to consult the parties affected in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction.

When evictions do take place, they must be carried out under conditions which respect the dignity of the persons concerned. The law must prohibit evictions carried out at night or during the winter period. When an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned. Domestic law must provide legal remedies and offer legal aid to those who are in need of seeking redress from the courts. Compensation for illegal evictions must also be provided. States should foresee sufficient places in emergency shelters and the conditions in the shelters should be such as to enable living in keeping with human dignity.

In view of these requirements, the Committee considered that further information, in particular with respect to eviction procedures, was needed to assess if this provision could be ac-

cepted by the Republic of Moldova. It encouraged the Government to pursue their efforts and to continue considering the acceptance of Article 31§2 in the near future.

***Article 31§3 The right to housing – Affordable housing***

The Committee provided information on aspects of interpretation and case law, emphasizing that, under this provision, an adequate supply of affordable housing must be ensured.

Housing is affordable if the household can afford to pay initial costs (deposit, advance rent), current rent and/or other costs (utility, maintenance and management charges) on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located. In particular, states must show that the affordability ratio of the poorest applicants for housing is compatible with their level of income.

They are furthermore required to:

- adopt appropriate measures for the construction of housing, in particular social housing;
- ensure access to social housing for all disadvantaged groups of people. Measures to reduce waiting times which are very long must be adopted. Legal remedies must be available in the event of excessive waiting times.
- introduce housing benefits for low-income and disadvantaged sections of the population.

Housing allowance is an individual right: all qualifying households must receive it in practice; legal remedies must be available in case of refusal.

Equal treatment with respect to housing (Article E) must be guaranteed, in particular, to the different groups of vulnerable persons, particularly low-income persons, the unemployed, single parent households, young persons, persons with disabilities including those with mental health problems as well as Roma or travellers.

In the light of these requirements, the Committee considered that further information would be needed in order to properly assess the situation in the Republic of Moldova. In particular, information would be needed on the waiting periods for accessing social housing and on legal or other remedies available in case such waiting periods are excessive. Information would furthermore be needed on the measures taken to ensure that no discrimination apply in respect of disadvantaged groups/vulnerable persons (such as Roma). The Committee invited the Republic of Moldova to continue its consideration of this provision with a view to its possible acceptance in the near future.

### III. EXCHANGE OF VIEWS ON THE COLLECTIVE COMPLAINTS PROCEDURE

Régis BRILLAT provided an overview of the collective complaints procedure, which had been so far accepted by 15 member States, including 14 states party to the European Union.

He pointed out that the collective complaints procedure, which came into force in 1998 under an Additional Protocol to the European Social Charter, complemented the judicial procedure under the European Convention of Human Rights. However, it was not a system of individual applications.

The aim of the procedure was to increase the effectiveness and the speed of the implementation of the European Social Charter and also to increase the role of the Social partners and NGOs by giving them a more prominent role in enabling them to directly apply to the Committee when they consider that the Charter is not correctly applied in a country.

The complainant organisation is not necessarily a victim and there is no obligation to exhaust domestic remedies.

The organisations entitled to lodge collective complaints are as follows:

- the European social partners: European Trade Union Confederation (ETUC), for employees; Business Europe and International Organisation of Employers (OIE), for employers;
- certain international non-governmental organisations (INGOs) holding participatory status with the Council of Europe;
- social partners at national level.

Furthermore, any State may grant representative national non-governmental organisations (NGOs) within its jurisdiction the right to lodge complaints against it. So far, only Finland has done so.

Admissibility. A complaint may be declared admissible even if a similar case has already been submitted to another national or international body. The fact that the substance of a complaint has been examined as part of the Charter supervision procedure based on government reports does not constitute an impediment to the complaint's admissibility. The fact that a complaint relates to a claim already examined in the context of a previous complaint is not in itself a reason for inadmissibility; the submission of new evidence during the examination of a complaint may prompt the Committee to re-assess a situation it has already examined in the context of previous complaints and, where appropriate, take decisions which may differ from the conclusions it adopted previously.

Decision on the merits. If the complaint is declared admissible, the Committee asks the respondent State to make written submissions on the merits of the complaint within a time limit which it sets. The President then invites the organisation that lodged the complaint to submit, on the same conditions, a response to these submissions. The President may then invite the respondent State to submit a further response. It is a real adversarial procedure.

International organisations of employers and trade unions are invited to make observations on complaints lodged by national organisations of employers and trade unions or by non-governmental organisations. The observations submitted here are transmitted to the organisation that lodged the complaint and to the respondent State.

The Committee may also invite any organisation, institution or person to submit observations. Any observation received by the Committee is transmitted to the respondent State and to the organisation that lodged the complaint.

In the course of the examination of the complaint, the European Committee of Social Rights may organise a hearing. The hearing may be held at the request of one of the parties or on the Committee's initiative. The hearing is public unless the President decides otherwise.

Following deliberation, the Committee adopts a decision on the merits of the complaint. It decides whether or not the Charter has been violated. The decision is notified to the parties and the Committee of Ministers.

Insofar as they refer to binding legal provisions and are adopted by a monitoring body established by the Charter and the Protocol providing for the system of complaints, the decisions of the European Committee of Social Rights must be taken into consideration by the States concerned; however, they are not enforceable in the domestic legal system. In practice, this means that when the Committee rules that the situation in a country is not in compliance with the Charter, the complainant organisation cannot require the committee's decision to be enforced in domestic law as would be the case with a ruling by a court in the State concerned.

The decisions of the Committee – like its Conclusions in the reporting system – are declaratory; in other words, they set out the law. On this basis, national authorities are required to take measures to give them effect under domestic law. In this connection, domestic courts could declare invalid or set aside domestic legislation if the Committee has ruled that it is not in compliance with the Charter, depending on the internal legal system of the State.

In the event of violation of the Charter, the State is asked to notify the Committee of Ministers of the Council of Europe of the measures taken or planned to bring the situation into conformity.

The Committee of Ministers may adopt a resolution, by a majority of those voting. The resolution takes account of the respondent State's declared intention to take appropriate measures to bring the situation into conformity. The Committee of Ministers' decision is based on social and economic policy considerations not on legal considerations.

If the State in question does not indicate its intention to bring the situation into conformity, the Committee of Ministers may also adopt a recommendation to the State. In view of the importance of this decision, a two-thirds majority of those voting is required here. In the case of both resolutions and recommendations, only States party to the Charter may take part in the vote.

The European Committee of Social Rights' decision on the merits of the complaint is made public at the latest four months after the report is transmitted to the Committee of Ministers and is published on the Council of Europe website.

Ultimately, it falls to the Committee to determine whether the situation has been brought into compliance with the Charter.

The Committee's findings of violation in the framework of the complaints procedure are not intended to be decisions against states. The spirit and purpose of the procedure, as the Committee understands it, is not to put the State on trial for its lack of implementation of the Charter. It is rather to put the normative provisions of the Charter to the test of specific and concrete situations. It is to assess what a State has to do or to prevent in order to guarantee the application of rights of the Charter in specific situations. In other words, the purpose is to

give an additional opportunity to states parties to bring the situation into conformity and to prevent possible further violations of the Charter.

There are other added values of the procedure: the complaints procedure is also important because it opens the Charter to the civil society, to its very beneficiaries, those who are directly concerned with the implementation of the Charter and who are the best guardians of these rights. It is therefore an opportunity for dialogue between different actors on the best way to implement the Charter at national level, drawing on the experience of other countries through the Committee. Accepting the collective complaints procedure would ultimately represent a sign of mature democracy.

Furthermore, accepting the procedure now produces an advantage to the States concerned in terms of reporting burden under the Charter: States having accepted the complaint procedure are exempted from some reporting obligations under the Charter.

Experience has shown that, since the introduction of the procedure, the number of complaints over time had been relatively limited and has not created an undue burden on governments.

It was also recalled that, in the framework of the Turin process started in 2014, reinforcement of the collective complaints procedure was a priority and all member states had been called on to ratify the Protocol. It provides a legal tool for guaranteeing the full enjoyment of fundamental social and economic rights and had important implications for improving democracy through the involvement of civil society as actors.

Moreover, the acceptance of the collective complaints procedure should contribute to bring the Republic of Moldova closer to the "*acquis communautaire*" in the field of social rights and in particular to harmonise national legislation and practice with the principles of the European Pillar of Social Rights. The European Pillar of Social Rights builds on the Revised European Social Charter of 1996 and the European Commission called for ratification by EU Member States of the Revised European Social Charter and the Collective Complaint Protocol for reinforcing the implementation of the Pillar.

The Committee remains at the disposal of the authorities of the Republic of Moldova and encourages them to take the necessary steps towards acceptance of additional provisions of the Charter and of the collective complaints procedure.

## **APPENDIX I: Programme of the Meeting on the Non Accepted Provisions of the European Social Charter**



### **PROGRAMME**

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

**organised by**

**Department of the European Social Charter, DG I  
Council of Europe**

**and**

**Ministry of Health, Labour and Social Protection of Republic of Moldova**

**Chisinau, 29 May 2018**

Venue: Ministry of Health, Labour and Social Protection  
2, Vasile Alecsandri Street, 2009-MD, Chisinau

Working languages: English and Romanian

The meeting is organised in the framework of the procedure provided for by Article 22 of the 1961 Charter on “non-accepted provisions”. It will consist of an exchange of views and information on the provisions not accepted by the Republic of Moldova with a view to evaluating the prospects for acceptance of additional provisions. There will also be an exchange of views on the collective complaints procedure.

The overall objective is to ensure the effectiveness of social rights in the Republic of Moldova.



### 9.30 **Opening of the meeting**

Mr. Boris Gilca, General Secretary of State, Ministry of Health, Labour and Social Protection

Mr. Régis Brillat, Executive Secretary of the European Committee of Social Rights, Council of Europe

### 9:45 **Thematic Group 1 *Employment, training and equal opportunities*: Article 1 - Article 9 - Article 10 - Article 15 - Article 18 - Article 20 - Article 24 - Article 25.**

1. During the previous meeting on non-accepted provisions, it was considered that the following provisions could be accepted by Republic of Moldova: Article 10§1, Article 10§2, Article 10§3 and Article 10§4. Therefore no discussion will take place with regard to these provisions, unless the Moldovan authorities wish to discuss them /bring new elements.
2. Provisions to be examined: Article 10§5, Article 15§3, Article 18§1, Article 18§2 and Article 25.
  - The situation in law and in practice in the Republic of Moldova – presentations by representatives of the Moldovan authorities
  - Presentation by Mrs. Kristine Dupate
  - Discussion

### 11:00 **Coffee break**

### 11.20 **Thematic Group 2 *Health, social security and social protection*: Article 3 - Article 11 - Article 12 - Article 13 - Article 14 - Article 23 - Article 30.**

1. During the previous meeting on non-accepted provisions, it was considered that the following provisions could be accepted by Republic of Moldova: Article 3§4, Article 14§1 and Article 14§2. Therefore no discussion will take place with regard to these provisions, unless the Moldovan authorities wish to discuss them /bring new elements.
2. Provisions to be examined: Article 13§4, Article 23, Article 30.
  - The situation in law and in practice in the Republic of Moldova – presentations by representatives of the Moldovan authorities
  - Presentation by Mrs. Diana Balanescu
  - Discussion

**12.20 Thematic Group 3 *Labour rights*: Article 2 - Article 4 - Article 5 - Article 6 - Article 21 - Article 22 - Article 26 - Article 28 - Article 29**

1. During the previous meeting on non-accepted provisions, it was considered that the following provisions could be accepted by Republic of Moldova: Article 4§2, Article 22. Therefore no discussion will take place with regard to these provisions, unless the Moldovan authorities wish to discuss them /bring new elements.
2. Provision to be examined: Article 4§1.
  - The situation in law and in practice in the Republic of Moldova – presentations by representatives of the Moldovan authorities
  - Presentation by Mr. Régis Brillat
  - Discussion

**13:00 Lunch break**

**14:30 Thematic Group 4 *Children, families, migrants*: Article 7 - Article 8 - Article 16 - Article 17 - Article 19 - Article 27 - Article 31**

1. During the previous meeting on non-accepted provisions, it was considered that the following provisions could be accepted by Republic of Moldova: Article 7§6, Article 19§1, Article 19§3, Articles 19§4 (a) and (b), Article 19§5, Article 19§9 and Articles 27§1 and 27§3. Therefore no discussion will take place with regard to these provisions, unless the Moldovan authorities wish to discuss them /bring new elements.
2. Provisions to be examined: Article 7§5, Article 19§2, Article 19§4 (c), Article 19§6, Article 19§10, Article 19§11, Article 19§12, Article 31.
  - The situation in law and in practice in the Republic of Moldova – presentations by representatives of the Moldovan authorities
  - Presentation by Mr. Jozsef Hajdu
  - Discussion

**15.40 Coffee break**

**16:00 The collective complaints procedure**

- Introduction by Mr. Régis Brillat and members of the European Committee of Social Rights
- Progress towards acceptance of the procedure by Republic of Moldova – comments by a representative of the Moldovan authorities
- Discussion/questions/answers

**17.00 Concluding remarks**

**Closing of the meeting**

## APPENDIX II: Situation of the Republic of Moldova with respect to the European Social Charter

### – The Republic of Moldova and the European Social Charter –

#### Signatures, ratifications and accepted provisions

The Republic of Moldova ratified the Revised European Social Charter on 08/11/2001, accepting 63 of the 98 paragraphs of the Charter.

It has not accepted the Additional Protocol of 1995 providing for a system of collective complaints.

#### The Charter in domestic law

Article 4 of the Constitution: "1. Constitutional provisions concerning human rights and freedoms shall be understood and implemented in accordance with the Universal Declaration of Human Rights, and with other conventions and treaties to which the Republic of Moldova is party. 2. Wherever disagreements appear between conventions and treaties signed by the Republic of Moldova and her own national laws, priority shall be given to international regulations."

#### Table of accepted provisions

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

#### Reports on non-accepted provisions

The European Committee of Social Rights ("the Committee") examines the situation of non-accepted provisions of the Revised Charter every 5 years after the ratification. It adopted [reports concerning the Republic of Moldova](#) in 2006 and in 2012.

Further information on the reports on non-accepted provisions is available on the [relevant webpage](#).

## Monitoring the implementation of the European Social Charter <sup>65</sup>

### I. Reporting system <sup>66</sup>

#### Reports submitted by the Republic of Moldova

Between 2004 and 2015, the Republic of Moldova submitted 11 reports on the application of the Charter.

The [11th report](#), submitted on 26/01/2015, concerns the accepted provisions related to Thematic Group 4 "Children, families, migrants" (Articles 7, 8, 16, 17, 19, 27, 31 of the Revised Charter). In addition, the report provides the information required by the Committee in the framework of Conclusions 2013 relating to Thematic Group 2 "Health, Social Security and Social Protection" (Articles 3, 11, 12, 13, 14, 23 and 30 of the Revised Charter), in the event of non-conformity for lack of information.

Conclusions with respect to these situations will be published in January 2016.

The 12th report, which should have been submitted by 31/10/2015, should concern the accepted provisions relating to Thematic Group 1 "Employment, training and equal opportunities", namely:

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

In addition, the report should provide the information required by the Committee in the framework of Conclusions 2014 relating to Thematic Group 3 "Labour rights" (Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29 of the Revised Charter), in the event of non-conformity for lack of information.

Conclusions with respect to these provisions will be published in January 2017.

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<sup>65</sup> The Committee monitors compliance with the Charter under two procedures, the reporting system and the collective complaints procedure, according to Rule 2 of the Committee's rules: « 1. The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure ».

Further information on the [procedures](#) may be found on the [HUDOC database](#) and in the [Digest of the case law of the Committee](#).

<sup>66</sup> Following a [decision taken by the Committee of Ministers in 2006](#), the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years. Following a [decision taken by the Committee of Ministers in April 2014](#), States having accepted the collective complaints procedure are required, in alternation with the abovementioned report, to provide a simplified report on the measures taken to implement the decisions of the Committee adopted in collective complaints concerning their country. The alternation of reports is rotated periodically to ensure coverage of the four thematic groups. Detailed information on the Reporting System is available on the [relevant webpage](#). The reports submitted by States Parties may be consulted in the [relevant section](#).

## Situations of non-conformity <sup>67</sup>

### Thematic Group 1 “Employment, training and equal opportunities” - Conclusions 2012

► *Article 151 - Right to work-Paragraph 1 - Policy of full employment*

It has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

► *Article 152 – Right to work – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

It has not been established that discrimination on the ground of age is prohibited; discrimination on the ground of sexual orientation is not prohibited; nationals of other States Parties do not have access to civil service jobs; and exceptions to the general prohibition of forced labour are too wide.

► *Article 154 – Right to work - Vocational guidance, training and rehabilitation*

It has not been established that the right to vocational guidance within the education system and labour market is guaranteed; that the right to vocational guidance within the education system and labour market is guaranteed; that continuing vocational training services operate in an efficient manner; nor that the right of persons with disabilities to mainstream training is effectively guaranteed and there is no legislation explicitly protecting persons with disabilities from discrimination in training.

► *Article 9 – Right to vocational guidance*

It cannot be established that the right to vocational guidance within the education system and labour market is guaranteed.

► *Article 1551 – Right of persons with disabilities to independence, social integration and participation in the life of the community – Vocational training for persons with disabilities*

There is no legislation explicitly protecting persons with disabilities from discrimination in education and training and the right of persons with disabilities to mainstream education and training is not effectively guaranteed.

► *Article 1552 – Right of persons with disabilities to independence, social integration and participation in the life of the community – Employment of persons with disabilities*

It has not been established that people with disabilities are guaranteed effective protection against discrimination in employment.

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

Termination of employment contract of the foreign worker leads to cancellation of the temporary residence permit thus obliging him/her to leave the country as soon as possible.

► *Article 20 - Right to equal opportunities and equal treatment in employment and occupation without sex discrimination*

Legislation prohibits the employment of women in heavy work and in underground work.

### Thematic Group 2 “Health, social security and social protection” - Conclusions 2013

► *Article 351 – Right to safe and healthy working conditions – Occupational health services*

The public authorities’ involvement in research relating to occupational health and safety as well as in the training of qualified professionals is inefficient.

► *Article 352 – Right to safe and healthy working conditions – Safety and health regulations*

- Levels of protection against asbestos and ionising radiation are inadequate;
- self-employed workers are not adequately protected.

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<sup>67</sup> Further information on the situations of non-conformity is available on the [HUDOC database](#).

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

- The occupational accident reporting system is inefficient;
- measures taken to reduce the excessive number of fatal accidents are insufficient;
- the labour inspection system is inefficient.

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

Insufficient efforts have been undertaken to reduce the prevailing high infant and maternal mortality rates.

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

It has not been established that:

- screening for diseases responsible for high levels of mortality is available;
- free medical supervision is provided throughout the period of schooling.

► *Article 11§3 – Right to protection of health - Prevention of diseases and accidents*

It has not been established that:

- there are adequate measures protecting the population from the risks of asbestos;
- adequate measures have been taken to prevent smoking;
- efficient immunisation and epidemiological monitoring programmes are in place;
- there are adequate measures in force for the prevention of accidents.

► *Article 12§1 – Right to social security – Existence of a social security system least equal to that required for the ratification of the European Code of Social Security*

- It has not been established that the minimum level unemployment benefit is adequate;
- the minimum level of old-age benefit is manifestly inadequate.

► *Article 12§2 – Right to social security – Maintenance of a social security system at a satisfactory level at least equal to that required for the ratification of the European Code of Social Security*

It has not been established that the Republic of Moldova maintains a social security system at a level at least equal to that necessary for the ratification of the European Code of Social Security.

► *Article 12§3 – Right to social security – Development of the social security system*

Efforts made to progressively raise the system of social security to a higher level are inadequate.

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

It has not been established:

- that the level of social assistance paid to a single person without resources is adequate;
- that the level of social assistance paid to elderly people without resources is adequate, and
- that people lacking resources are entitled to obtain, free of charge, the medical assistance required by their health condition.

### **Thematic Group 3 “Labour rights” - Conclusions 2014**

► *Article 2§3 - Right to just conditions of work - Annual holiday with pay*

The law allows, in certain circumstances, that all annual leave to be carried over to the following year, without guaranteeing the workers’ right to take at least two weeks’ uninterrupted holiday during the year the holidays are due.

► *Article 2§7 - Right to just conditions of work - Night work*

The legislation makes no provision for a medical check-up before being assigned to night work.

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

- As a general rule, no notice period and/or severance pay in lieu thereof is applicable to dismissal in the private sector, or termination of duties in the public sector.
- With regard to the particular situations in which provision has been made for notice or severance pay in lieu thereof, the period or amount is not reasonable as regards:
  - dismissal on the ground of the employee's unsuitability, beyond three years of service;
  - termination of duties in the public sector as a result of liquidation, refusal to accept a geographical transfer or staff reductions, beyond three years of service;
  - termination of duties in the public sector on other grounds, beyond three months of service.

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

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

► *Article 5 - Right to organise*

- Trade unions not operating nationwide are required to belong to a national, sectoral or inter-sectoral trade union in order to acquire legal personality which unduly restricts the right to form trade unions;
- It has not been established that compensation and penalties are provided for by law in case of discrimination based on trade union membership;
- It has not been established that the national law is applied in such a way that it does not impair the freedom to register a trade union.

► *Article 6§2 - Right to bargain collectively - Negotiation procedures*

It has not been established that voluntary negotiations between employers or employers' organisations and workers' organisations are promoted in practice.

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

- The restrictions to the right to strike for public officials and employees in sectors such as the public administration, state security sectors and national defence do not comply with the conditions established by Article G of the Charter.
- The right to strike is denied to all employees in electricity and water supply services, telecommunication and air traffic control.
- It is not established that the restrictions to the right to strike of the employees of the customs authorities comply with the conditions established by Article G of the Charter.
- The restrictions imposed on workers on strike to protect the enterprise installations and equipment and to ensure their uninterrupted functioning do not comply with the conditions established by Article G of the Charter.

► *Article 26§2 - Right to dignity in the workplace - Moral harassment*

It has not been established that employees are given appropriate and effective protection against moral (psychological) harassment in the workplace or in relation to work.

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

It has not been established that:

- workers' representatives, other than trade union representatives are guaranteed protection against dismissal or prejudicial acts other than dismissal where they are exercising their functions outside the scope of collective bargaining;
- facilities identical to those afforded to trade union representatives are provided to other workers' representatives.

#### **Thematic Group 4 "Children, families, migrants" - Conclusions 2011**

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

Sufficient measures have not been taken to guarantee the prohibition on employment before the age of 15 in practice.

► *Article 7§2 – Right of children and young persons to protection - Prohibition of employment under the age of 18 for dangerous or unhealthy activities*

It has not been established that the labour inspectorate supervises work carried out by persons under the age of 18 which might be considered dangerous or unhealthy.

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

It has not been established that permitted working hours during the school year are sufficiently limited so as not to affect the child's school attendance, receptiveness and homework.

► *Article 7§4 – Right of children and young persons to protection - Working time for young persons under 18*

It has not been established that the Republic of Moldova took sufficient measures to guarantee the limitation of the working hours of persons under 18 years of age in practice.

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

It has not been established that the Republic of Moldova took sufficient measures for the minimal length of four weeks' annual holiday with pay for employed persons of under 18 years of age to be respected in practice.

► *Article 7§8 – Right of children and young persons to protection – Prohibition of night work*

It has not been established that the Republic of Moldova took sufficient measures to guarantee the respect of the prohibition of night work for employed persons of under 18 years of age in practice.

► *Article 7§9 – Right of children and young persons to protection – Regular medical examination*

It has not been established that the Republic of Moldova took sufficient measures to ensure that employed persons of under 18 years of age undergo regular medical control in practice.

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

1. The enforcement of anti-trafficking legislation remains weak;
2. It has not been established that children are effectively protected against the misuse of information technologies.

► *Article 17§1 – Right of mothers and children, to social, legal and economic protection – Assistance, education and training*

1. Corporal punishment of children is not prohibited;
2. It has not been established that children in public care receive the sufficient degree of protection and assistance;
3. Young offenders may be held in adult detention facilities.

► *Article 17§2 – Right of mothers and children, to social, legal and economic protection – Free primary and secondary education - regular attendance at school*

1. Measures taken to increase the enrolment rate in secondary schools are not sufficient;
2. Measures taken to increase the school enrolment rate of vulnerable groups are not sufficient.

► *Article 19§8 – Right of migrant workers and their families to protection and assistance - Guarantees concerning deportation*

1. It has not been established that the grounds for the expulsion of a migrant worker are those permitted by the Charter;
2. It has not been established that there are adequate rights to appeal against a decision to expel a migrant worker;
3. It has not been established that members of a migrant worker's family may remain in the territory.



**The Committee has been unable to assess compliance with the following provisions and has invited the Moldovan Government to provide more information in the next report:**

Thematic Group 1 "Employment, training and equal opportunities"

- ▶ Article 24 - Conclusions 2012

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

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Thematic Group 3 "Labour rights"

- ▶ Article 2§2 - Conclusions 2014
- ▶ Article 2§4 - Conclusions 2014
- ▶ Article 4§3 - Conclusions 2014
- ▶ Article 6§3 - Conclusions 2014
- ▶ Article 26§1 - Conclusions 2014
- ▶ Article 29 - Conclusions 2014

**Thematic Group 4 "Children, families, migrants"**

- ▶ Article 8§1 - Conclusions 2011

## **II. Examples of progress achieved in the implementation of rights under the Charter (update in progress)**

### **General**

- ▶ Adoption of the national action plan on human rights (2004-2008).
- ▶ Adoption of a national action plan for 2006 – 2009 was designed to strengthen the protection against harassment at work.

### **Health**

- ▶ Adoption, as part of the United Nations Millennium Development Goals, of a strategy for economic growth and poverty reduction (2004-2006), two of whose main indicators are reductions in the infant and maternal mortality rates by 2006.
- ▶ Adoption of the Occupational Health and Safety Act adopted by the Moldovan Parliament on 10 July 2008 and which has entered into force on 1 January 2009.
- ▶ By Decision No. 886 of 6 August 2007, the Government of Moldova approved a national health policy who sets out the priorities for the following fifteen years.

### **Children/education**

- ▶ Adoption of an "education for all" strategy in 2003, with the aim of increasing enrolment rates in pre-school establishments to 75% and in primary schools to 100% by 2007, and of reducing disparities between rural and urban areas and between disadvantaged sectors of the population and those on average incomes.

### **Non-discrimination (sex)**

- ▶ Adoption in 2003 of a national plan to promote equality of the sexes in society.

### **Right to work - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)**

- ▶ Law No. 156-XVI on the organisation of (alternative) civil service brought the length of non-military national service into line with that of military service (12 months).

## **APPENDIX III: Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter**

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

The Committee of Ministers of the Council of Europe,

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

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

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

Emphasising that human rights must be enjoyed without discrimination;

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

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

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

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

7. Invites member states and the relevant bodies of the Council of Europe to increase their effort to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.