March 2021

EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2020

ROMANIA

This text may be subject to editorial revision.

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

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

The following chapter concerns Romania, which ratified the Revised European Social Charter on 7 May 1999. The deadline for submitting the 19th report was 31 December 2019 and Romania submitted it on 21 January 2020.

The Committee recalls that Romania was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to all findings of non-conformity or deferral in its previous conclusions (Conclusions 2016).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2016) found the situation to be in conformity, there was no examination of the situation in 2020.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerned the following provisions of the thematic group I "Employment, training and equal opportunities":

- 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 to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 20);
- the right to protection in cases of termination of employment (Article 24);
- the right of workers to the protection of their claims in the event of the insolvency of their employer (Article 25).

Romania has accepted all provisions from the above-mentioned group except Articles 10, 15§3, 18§1 and 18§2.

The reference period was from 1 January 2015 to 31 December 2018.

The conclusions relating to Romania concern 9 situations and are as follows:

– 3 conclusions of conformity: Articles 1§1, 20 and 24.

– 6 conclusions of non-conformity: Articles 1§2, 1§3, 1§4, 15§1, 15§2 and 25.

The next report from Romania will deal with the following provisions of the thematic group II "Health, social security and social protection":

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

The deadline for submitting that report was 31 December 2020.

Conclusions and reports are available at www.coe.int/socialcharter.

Article 1 - Right to work

Paragraph 1 - Policy of full employment

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

Employment situation

According to Eurostat, the GDP growth rate increased from 3% in 2015 to 4.5% in 2018, considerably exceeding the average for the 28 European Union (EU) member States (2% in 2018).

The overall employment rate (persons aged 15 to 64 years) increased from 61.4% in 2015 to 64.8% in 2018, which is below the EU 28 average (68.6% in 2018).

The employment rate for men increased from 69.5% in 2015 to 73.2% in 2018, moving closer to the EU 28 average (73.8% in 2018). The employment rate for women rose from 53.2% in 2015 to 56.2% in 2018, which is below the EU 28 average (63.3% in 2018). The employment rate for older workers (55 to 64-year-olds) increased from 41.1% in 2015 to 46.3% in 2018, which is well below the EU 28 average (58.7% in 2018). Youth employment (15 to 24-year-olds) remained stable, at 24.5% in 2015 and 24.7% in 2018, which is also well below the EU 28 average (35.3% in 2018).

The overall unemployment rate (persons aged 15 to 64 years) fell from 7% in 2015 to 4.3% in 2018, which is below the EU 28 average (7% in 2018).

The unemployment rate for men dropped from 7.7% in 2015 to 4.8% in 2018 while the rate for women fell likewise from 6.1% in 2015 to 3.6% in 2018 – both rates well below the EU 28 averages (6.7% and 7.2% respectively in 2018). Youth unemployment (15 to 24-year-olds) decreased from 21.7% in 2015 to 16.2% in 2018 but remained above the EU 28 average (15.2% in 2018). Long-term unemployment (12 months or more, as a percentage of overall unemployment for persons aged 15 to 64 years) remained stable, at 43.9% in 2015 and 44.1% in 2018, which is slightly above the EU 28 average (43.4% in 2018).

The proportion of 15 to 24-year-olds “outside the system” (not in employment, education or training, i.e. NEET) fell from 18.1% in 2015 to 14.5% in 2018 (as a percentage of the 15 to 24 year-old age group), which is above the EU 28 average (10.5% in 2018).

The Committee notes that the labour market situation improved during the reference period (with an increase in the employment rate and unemployment generally falling). However, employment rates remained lower than the EU 28 averages, particularly for young people and older workers. Furthermore, there was a rise in long-term unemployment and the gap between male and female employment rates remained large (17 percentage points in 2018).

Employment policy

In its report, the Government recalls that employment policies are governed by the National Employment Strategy 2014-2020. The strategy’s main objectives include: a) reducing youth unemployment, b) increasing labour market participation rates for older workers, women and members of vulnerable groups (people with disabilities, Roma, etc.) and c) developing qualified human resources with skills aligned with labour market requirements.

The Government reports that in order to achieve these goals, various laws were amended or supplemented, including Law No. 76/2002 on the unemployment insurance system and incentives for employment. These amendments and additions were mainly aimed at: a) introducing a new, more effective approach to vocational information and careers guidance by profiling jobseekers according to their level of employability (through a series of categories ranging from low to high), b) providing better incentives for geographical mobility (especially to encourage movement from or to poor or marginalised areas) by introducing relocation allowances and by revising the amounts and conditions for employment and installation allowances, and c) stimulating the employment of people belonging to groups with difficulties

entering the labour market (school leavers, young NEETs, jobseekers aged over 45 years, the long-term unemployed, etc.) by increasing the subsidies granted to employers recruiting them (see Government Ordinances Nos. 60/2016, 6/2017 and 60/2018).

The report states that a procedure was developed for profiling jobseekers registered with Bucharest employment agencies. The Committee asks for clarification in the next report as to whether this procedure is applied in all employment agencies in Romania.

In response to the Committee's questions in its previous conclusions (2016), the Government provides statistics on the participants in active labour market measures implemented under the Youth Guarantee scheme, presented by type of measure (identification and registration in the National Employment Agency's database; information sessions; Second Chance Programme for Primary Education; Second Chance Programme for Lower Secondary Education; apprenticeship contracts; vocational training; subsidised jobs; etc.). In this respect, the Committee notes that, according to the European Commission, the percentage of young people who left the Youth Guarantee scheme with an offer (for a job, internship, etc.) within four months of joining it increased slightly, from 40.2% in 2017 to 42.1% in 2018. On the other hand, the percentage of young NEETs covered by the programme remained low, and even decreased, with only 11.6% of all young NEETs aged 15-24 covered in 2018, compared to 14.1% in 2017 (Youth Guarantee country by country, Romania, October 2020). The Committee requests that the next report provide updated information on the labour market measures specifically designed to support young people, including those who are NEET (with the type of measure and the number of beneficiaries or participants by year).

The Government also provides statistics on the beneficiaries of various measures implemented under the National Employment Strategy. However, these data do not make clear which employment measures were implemented with the specific aim of supporting women and Roma. The Committee therefore asks for information on this in the next report (including the type of measure and the number of beneficiaries or participants by year).

The Committee also requests that the next report provide information on the activation rate (i.e. the average number of participants in active measures as a percentage of total unemployed).

According to European Commission data, public expenditure on labour market policies (as a percentage of GDP) decreased by almost half, falling from 0.18% in 2015 to 0.1% in 2017 (with the proportion for active measures remaining relatively stable: 0.02% in 2015 and 0.03% in 2017). The Committee considers that these percentages were extremely low, particularly in the light of the high unemployment rates in some categories (young people and the long-term unemployed).

Lastly, the Committee takes note of the information provided by the Government on the monitoring of the implementation of active labour market measures and the evaluation of their effectiveness.

Conclusion

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

Article 1 - Right to work

Paragraph 2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

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

1. Prohibition of discrimination in employment

Article 1§2 of the Charter prohibits all forms of discrimination in employment. The Committee asked the State Parties to provide updated information for this reporting cycle on the legislation prohibiting all forms of discrimination in employment, in particular on grounds of gender (had Article 20 not been accepted), race, ethnic origin, sexual orientation, religion, age, political opinion, disability (had Article 15§2 not been accepted), including information on legal remedies. It furthermore asked to indicate any specific measures taken to counteract discrimination in the employment of migrants and refugees.

The Committee will, accordingly, focus its assessment specifically on these aspects. It will also examine responses to any findings of non-conformity or deferrals in its previous conclusion.

The Committee recalls that Romania has accepted Article 15§2 of the Charter and Article 20 of the Charter. For aspects concerning discrimination in employment on grounds of disability and gender, the Committee therefore refers to its Conclusions on these provisions.

As regards the legislation prohibiting discrimination in general terms, the report indicates that under Article 5 of the Labour Code (Law No. 53/2003), any direct or indirect discrimination against an employee on grounds of sex, sexual orientation, genetic characteristics, age, nationality, race, colour, ethnicity, religion, political choice, social origin, disability, family status, trade union membership or trade union activity, is prohibited. According to Article 159 (3) of the Labour Code any discrimination based on the above-mentioned criteria shall be prohibited when establishing and providing wages/remuneration.

Moreover, the Government Ordinance 137/2000 on preventing and sanctioning all forms of discrimination, introduced additional, more detailed rules on discrimination in labour and social protection relations.

With regard to discrimination based on ethnic origin, the Committee takes notes of the information provided by the ILO CEACR which noted persisting disparities in education and employment levels between Roma and non-Roma persons (Direct Request (CEACR) – adopted 2018, published at the 108th ILC session (2019), Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Romania (Ratification: 1973)). The Committee also notes that according to the conclusions of the European Commission against Racism and Intolerance (ECRI) published on 16 May 2017, there is no mechanism in place that guarantees the accountability of local authorities to the central authorities in implementing the 2012–20 Strategy on Inclusion of Romanian Citizens belonging to the Roma minority. It further notes that the United Nations Committee on the Rights of the Child, in its concluding observations, remained deeply concerned that Roma children continue to face discrimination with regard to access to education and employment (CRC/C/ROU/CO/5, 13 July 2017, paragraph 16). The Committee asks information on the concrete measures taken to ensure equal treatment of Roma in the field of employment.

With regard to specific measures taken to counteract discrimination in the employment of migrants and refugees, the report indicates that, during the reference period, the National Council for Combating Discrimination (hereinafter the “NCCD”) carried out a series of training programs for magistrates, civil servants and other key categories in the field of non-discrimination and human rights.

The Committee further recalls that appropriate and effective remedies must be ensured in the event of an allegation of discrimination. The notion of effective remedies encompasses judicial or administrative procedures available in cases of an allegation of discrimination, able to provide reinstatement and compensation, as well as adequate penalties effectively enforced by labour inspection; it also covers an appropriate adjustment of the burden of proof which should not rest entirely on the complainant, as well as the setting-up of a special, independent body to promote equal treatment. The Committee explicitly requested information on remedies for this examination cycle.

With regard to judicial or administrative procedures available, the Committee notes in the Country Report on Non-discrimination 2019 of the European Equality Law Network that victims of alleged discrimination may file a petition with the NCCD and/or lodge a complaint for damages with the civil courts. Victims can also choose to use both options simultaneously and the cases are exempt from court fees for both options. The NCCD is required by law to participate as an expert in all such civil proceedings. The same source indicates that in the case of a civil complaint for damages, the complainant can request pecuniary and non-pecuniary damages and other types of penalty (e.g., withdrawal or suspension of licence for private entities providing services). Both the NCCD and the courts can oblige the defendant to publish their decisions in the media.

More specifically, in work-related disputes brought before the labour courts (sections within the civil courts specialised in labour law), the complainants can also request moral damages, including on grounds of discrimination. The Labour Code was amended in 2007 to include 'moral liability', a specific obligation on the employer to pay both moral and material damages to the employee, to compensate the employee for loss, injury or any harm suffered during employment, or in connection with work activities (Country Report on Non-discrimination 2019, the European Equality Law Network).

With regard to compensation, the Committee noted previously that there is no upper limit on compensation in cases of discrimination and the amount is determined by courts (Conclusions 2008). The Country Report on Non-discrimination of the European Equality Law Network refers to a case where the Craiova Court of Appeal increased the damages awarded in a case of discrimination in the education of a Roma pupil to EUR 10,000. The same report indicates that subsequent cases have confirmed the informal ceiling of EUR 10,000.

In reply to a previous question of the Committee regarding information on cases of discrimination in employment dealt with by courts and the NCCD (Conclusions 2016), the report provides information regarding two cases. In one case, the NCCD found that the person was victim of discrimination, harassment and breach of the right to dignity, and imposed a fine of EUR 4,132 (RON 20,000) on the employer. In another case, the Iasi Court of Appeal found that an employee had been harassed and humiliated at his workplace after his reinstatement following a court decision that annulled his dismissal. In the latter case, the court granted EUR 10,000 as compensation to the employee.

The Committee requests updated information in the next report on cases of discrimination in employment dealt with by courts and the National Council for Combatting Discrimination, with specific indications regarding their nature and outcome, sanctions imposed on the employers and compensation granted to the employees.

The Committee also asks for information on the remedies available for victims in case of discriminatory termination of employment (whether reinstatement is available and what rules govern the amounts of compensation awarded).

With regard to sanctions, the Committee notes in the Country Report on Non-discrimination 2019 of the European Equality Law Network that according to the Government Ordinance 137/2000 on preventing and sanctioning all forms of discrimination, if the victim is an individual, the fine is within the range of EUR 250-7,500 (RON 1,000-30,000), whereas if the

victims are a group or a community, the fine is within the range of EUR 500-25,000 (RON 2,000-100,000).

As regards the burden of proof in cases of alleged discrimination in employment, the Committee noted previously that the burden of proof lies with the defendant and asked how the courts have interpreted and applied the provisions on the burden of proof (Conclusions 2016). The report indicates that according to Article 20 (6) of the Government Ordinance No. 137/2000, the person concerned has the obligation to prove the existence of facts from which it may be presumed that there has been direct or indirect discrimination and it shall be for the respondent to prove that the facts do not constitute discrimination. Moreover, Article 272 of the Labour Code provides that the burden of proof in the labour disputes is on the employer, who shall submit the evidence for its defence during the first hearing in front of the court. The report states that the courts and the National Council for Combating Discrimination (NCCD), interpret the provisions on the shift in the burden of proof according to the applicable international standards and directives.

With regard to equality bodies, the Committee notes the mandate of the NCCD encompasses: (a) prevention of discrimination; (b) mediation in cases of discrimination; (c) investigating and sanctioning acts of discrimination; (d) monitoring cases of discrimination; (e) providing specialised assistance to victims of discrimination (see Article 19 of Government Ordinance No. 137/2000). The main function of the NCCD is similar to a quasi-judicial body. When it finds that discrimination has occurred, the NCCD can issue administrative sanctions: administrative warnings and fines. The NCCD rulings can be appealed before the administrative courts. The NCCD can also start a case *ex officio*.

The Committee notes that the 2018 annual report of the NCCD mentions 822 petitions received and that the NCCD found discrimination in 97 cases. Although discrimination was found in a lower number of cases than in 2017, there was an increase in the remedies ordered by the NCCD: 86 fines, 56 warnings, 41 recommendations, 7 decisions to continue monitoring the situation and in 46 cases, the perpetrators were ordered to publish summaries of the NCCD decision in the media. The highest amount of fines applied was of EUR 6,300 (RON 30,000). The 86 fines issued in 2018 cumulatively amount to approximately EUR 100,000 (RON 475,000).

The Committee notes from the Country Report 2019 of the European Equality Law Network that the NCCD has not so far developed an operational mechanism to monitor infringements of the legislation or to monitor compliance with its own decisions. The Committee asks that the next report provide information on how this is ensured in practice.

The Committee asks information on the role and activity of the Labour Inspectorate in monitoring discrimination in employment (inspections carried out and sanctions imposed on employers).

Pending receipt of the information requested, the Committee concludes that the situation in Romania is in conformity with Article 1§2 of the Charter with regard to prohibition of discrimination in employment.

2. Forced labour and labour exploitation

The Committee recalls that forced or compulsory labour in all its forms must be prohibited. It refers to the definition of forced or compulsory labour in the ILO Convention concerning Forced or Compulsory Labour (No.29) of 29 June 1930 (Article 2§1) and to the interpretation given by the European Court of Human Rights of Article 4§2 of the European Convention on Human Rights (*Van der Mussele v. Belgium*, 23 November 1983, § 32, Series A no. 70; *Siliadin v. France*, no. 73316/01, §§ 115-116, ECHR 2005-VII; *S.M. v. Croatia* [GC]*,* no. 60561/14, §§ 281-285, 25 June 2020). The Committee also refers to the interpretation by the Court of the concept of « servitude », also prohibited under Article 4§2 of the Convention (*Siliadin,* § 123; *C.N. and V. v. France,* § 91, 11 October 2012).

Referring to the Court's judgment of *Siliadin v. France,* the Committee has in the past drawn the States' attention to the problem raised by forced labour and exploitation in the domestic environment and the working conditions of the domestic workers (Conclusions 2008, General Introduction, General Questions on Article 1§2; Conclusions 2012, General Introduction, General Questions on Article 1§2). It considers that States Parties should adopt legal provisions to combat forced labour in the domestic environment and protect domestic workers, as well as take measures to implement them.

The European Court of Human Rights has established that States have positive obligations under Article 4 of the European Convention to adopt criminal law provisions which penalise the practices referred to in Article 4 (slavery, servitude and forced or compulsory labour) and to apply them in practice (*Siliadin,* §§ 89 and 112). Moreover, positive obligations under Article 4 of the European Convention must be construed in the light of the Council of Europe Convention on Action against Trafficking in Human Beings (ratified by almost all the member States of the Council of Europe) (*Chowdury and Others v. Greece,* § 104, 30 March 2017). Labour exploitation in this context is one of the forms of exploitation covered by the definition of human trafficking, and this highlights the intrinsic relationship between forced or compulsory labour and human trafficking (see also paragraphs 85-86 and 89-90 of the Explanatory Report accompanying the Council of Europe Anti-Trafficking Convention, and *Chowdury and Others,* § 93). Labour exploitation is taken to cover, at a minimum, forced labour or services, slavery and servitude (GRETA – Group of Experts on Action against Trafficking in Human Beings, *Human Trafficking for the Purpose of Labour Exploitation*, Thematic Chapter of the 7th General Report on GRETA's Activities (covering the period from 1 January to 31 December 2017), p. 11).

The Committee draws on the case law of the European Court of Human Rights and the above-mentioned international legal instruments for its interpretation of Article 1§2 of the Charter, which imposes on States Parties the obligation to protect effectively the right of workers to earn their living in an occupation freely entered upon. Therefore, it considers that States Parties to the Charter are required to fulfil their positive obligations to put in place a legal and regulatory framework enabling the prevention of forced labour and other forms of labour exploitation, the protection of victims and the investigation of arguable allegations of these practices, together with the characterisation as a criminal offence and effective prosecution of any act aimed at maintaining a person in a situation of severe labour exploitation. The Committee will therefore examine under Article 1§2 of the Charter whether States Parties have fulfilled their positive obligations to:

- Criminalise and effectively investigate, prosecute and punish instances of forced labour and other forms of severe labour exploitation;
- Prevent forced labour and other forms of labour exploitation;
- Protect the victims of forced labour and other forms of labour exploitation and provide them with accessible remedies, including compensation.

In the present cycle, the Committee will also assess the measures taken to combat forced labour and exploitation within two particular sectors: domestic work and the "gig economy" or "platform economy".

The Committee notes that the national authorities have partially replied to the specific, targeted questions for this provision on the exploitation of vulnerability, forced labour and modern slavery their addendum to the report (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities").

Criminalisation and effective prosecution

The Committee notes from the addendum to the report that Article 4(1) of the Labour Code states that forced labour shall be prohibited and Article 265(2) states that employing a person who is illegally staying in Romania fully knowing that s/he is a victim of trafficking in human

beings is punishable by imprisonment. The addendum also refers to Law no. 286/2009 on the Criminal Code, with no more details. The Committee notes in this regard from GRETA's Report on Romania of 2016 (Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Romania, second evaluation round, GRETA (2016)20, 30 September 2016) that Article 211 of the Criminal Code criminalises trafficking in human beings, including for the purpose of forced labour and slavery (the different forms of exploitation are listed in Article 182 of the Criminal Code).

The Committee recalls that States Parties must not only adopt criminal law provisions to combat forced labour and other forms of severe labour exploitation but also take measures to enforce them. It considers, as the European Court of Human Rights did (*Chowdury and Others*, §116), that the authorities must act of their own motion once the matter has come to their attention; the obligation to investigate will not depend on a formal complaint by the victim or a close relative. This obligation is binding on the law-enforcement and judicial authorities.

The Committee asks that the next report provide information on the application in practice of Article 211 of the Criminal Code in relation to forced labour and other forms of labour exploitation, as well as of Article 265(2) of the Labour Code in respect of third-country nationals. The report should provide information (including figures, examples of case law and specific penalties applied) on the prosecution and conviction of perpetrators during the next reference period, in order to assess in particular how the national legislation is interpreted and applied.

Prevention

The Committee considers that States Parties should take preventive measures such as data collection and research on the prevalence of forced labour and labour exploitation, awareness-raising campaigns, the training of professionals, law-enforcement agencies, employers and vulnerable population groups, and should strengthen the role and the capacities/mandate of labour inspection services to enforce relevant labour law on all workers and all sectors of the economy with a view to preventing forced labour and labour exploitation. States Parties should also encourage due diligence by both the public and private sectors to identify and prevent forced labour and exploitation in their supply chains.

The addendum to the report indicates that, to combat trafficking in human beings, the National Agency against Trafficking in Human Beings (ANITP) was established. The ANITP set up a database called SIMEV (Integrated System for the Monitoring and Assessment of victims of trafficking in persons). This database includes several categories of indicators for different perspectives of analysis of the phenomenon at national level, and for policy development.

The Committee further notes from the addendum to the report submitted by the national authorities that monitoring the activity of the economic operators in the professional fields with high fluctuations of labour force (construction, agriculture, wood-processing industry, tourism, etc.) is one of the specific objectives of the National Strategies against Trafficking in Persons (2012-2016 and 2018-2022). In order to achieve this objective, an action named "Performing periodic inspections to prevent or identify situations of trafficking in persons for the purpose of labour exploitation" has been established within the framework of Action Plans for the implementation of the National Strategies. The Committee asks for more detailed information in the next report on the implementation and impact of the National Strategy 2018-2022, particularly in the area of prevention and detection of labour exploitation. It also requests that the next report provide information on specific actions carried out by labour inspectors with a view to detecting cases of labour exploitation, particularly in sectors such as agriculture, construction, hospitality and manufacturing, including in relation to training and resources. The report should indicate the number, if any, of presumed victims of forced labour or labour exploitation detected as a result of such inspections.

The Committee asks that the next report provide information on how private employment agencies offering employment abroad are monitored. It notes from the abovementioned

GRETA Report that the licencing of these agencies was not mandatory but that the Labour Inspectorate had proposed that it be so (para. 55). The Committee wishes to be informed of any developments in this regard.

No information has been provided in the report on whether Romanian legislation includes measures designed to force companies to report on action taken to investigate forced labour and exploitation of workers among their supply chains and requires that every precaution be taken in public procurement processes to guarantee that funds are not used unintentionally to support various forms of modern slavery. The Committee accordingly reiterates its request on this point.

Protection of victims and access to remedies, including compensation

The Committee considers that protection measures in this context should include the identification of victims by qualified persons and assistance to victims in their physical, psychological and social recovery and rehabilitation.

The Committee notes from the report that according to the statistical data registered in the SIMEV database, in the period 2015-2018 the percentage of persons exploited for labour exploitation amounted to 14% of the total number of identified victims of trafficking. Most of the victims trafficked for labour exploitation are male adults. The National Mechanism for the Identification and Referral of Victims of Trafficking in Persons (MNIR), approved by Joint Order No. 335/2007, was improved within the project "Trafficking in human beings- a victim-centred approach", implemented between March 2017 and July 2019, by reviewing the identification and referral procedures and developing and supplementing them with the procedure for conducting the risk assessment, the procedure for granting the recovery and reflection period, and the procedure for assisted voluntary repatriation.

The Committee requests that the next report provide information on the number of presumed and identified victims of forced labour and labour exploitation and the number of such victims benefiting from protection and assistance measures during the next reference period. It also asks for detailed information on the type of assistance provided by the authorities (protection against retaliation, safe housing, healthcare, material support, social and economic assistance, legal aid, translation and interpretation, voluntary return, provision of residence permits for migrants) and on the duration of such assistance.

The Committee further asks for confirmation in the next report that the existing legal framework affords the victims of forced labour and labour exploitation, including irregular migrants, access to effective remedies (before criminal, civil or labour courts or other mechanisms) designed to provide compensation for all damage incurred, including lost wages and unpaid social security contributions. It asks for statistics on the number of victims awarded compensation and examples of the sums granted.

Domestic work

The Committee reiterates that domestic work may give rise to forced labour and exploitation. Such work often involves abusive, degrading and inhuman living and working conditions for the domestic workers concerned (see Conclusions 2012, General Introduction, General Questions, and the Court's judgment in *Siliadin v. France*). States Parties should adopt legal provisions to combat forced labour in the domestic environment and protect domestic workers as well as take measures to implement them (Conclusions 2008, General Introduction, General Question). The Committee recalls that under Article 3§3 of the Charter, inspectors must be authorised to inspect all workplaces, including residential premises, in all sectors of activity (Conclusions XVI-2 (2003), Czech Republic, relating to Article 3§2 of the 1961 Charter; Statement of Interpretation of Article 3§3 (i.e., Article 3§2 of the 1961 Charter)). It considers that such inspections must be clearly provided for by law and sufficient safeguards must be put in place to prevent risks of unlawful interferences with the right to respect for private life.

In its previous conclusions (Conclusions 2012, 2016), the Committee sought information on the legislation and measures adopted to combat forced labour in the domestic environment. The Committee also stated that, should the information requested not appear in the next report, nothing would allow to show that the situation was in conformity with Article 1§2 of the Charter on this point (Conclusions 2016).

The Committee notes from the current report that labour inspectors carry out thematic or unexpected controls regarding the identification of undeclared work and the way in which natural persons, individual companies and family enterprises respect the legal provisions regarding the conclusion of labour contracts. Where a person working without an individual labour contract is detected, they impose fines from 500 lei to 1,000 lei. With regard to domestic work, the report indicates that the major impediment in carrying out inspections is related to the fact that labour inspectors can only enter the dwelling of a natural person on the basis of the owner's consent or of a special permit issued by the competent authority.

The Committee recalls that it has previously concluded that the situation in Romania was not in conformity with Article 3§2 of the Charter on the ground that domestic workers were not covered by occupational health and safety legislation (Conclusions 2007, 2009, 2013, 2017). In relation to Article 3§3, it noted that labour inspectors did not carry out inspections of private homes (Conclusions 2017).

The Committee also notes from the abovementioned GRETA Report that labour inspectors are not allowed by law to access private households and thus cannot inspect the working conditions of domestic workers (para. 54; see also para. 14). In this respect, GRETA urged the Romanian authorities to intensify their efforts to prevent trafficking for the purpose of labour exploitation, in particular by expanding the mandate of labour inspectors so that they can be actively engaged in such prevention, including in domestic households (para. 56).

In the light of the foregoing, the Committee asks that the next report clarify how labour law standards (working conditions, health and safety) are monitored in practice concerning domestic workers, and how such workers are protected (i.e., detection and access to remedies) from labour exploitation and abusive practices.

In the meantime, the Committee considers that it has not been established that the national authorities have fulfilled their positive obligations to prevent labour exploitation of domestic workers.

"Gig economy" or "platform economy" workers

The Committee notes that the report does not reply to its request for information on the measures taken to protect workers from exploitation in the "gig economy" or "platform economy".

The Committee reiterates its request and asks for information in the next report on whether workers in the "platform economy" or "gig economy" are generally regarded as employees or self-employed workers. It also asks whether the powers of the competent labour inspection services include the prevention of exploitation and unfair working conditions in this particular sector (and if so, how many inspections have been carried out), and whether workers in this sector have access to remedies, particularly to challenge their status and/or unfair practices.

In the meantime, pending receipt of the information requested, the Committee reserves its position on the issue of forced labour and labour exploitation regarding the points mentioned above (criminalisation, prevention in general, protection, gig economy).

3. Work of prisoners and other aspects of the right to earn one's living in an occupation freely entered upon

The Committee takes note of the information provided in reply to the questions raised in its previous conclusion (Conclusions 2016) regarding the work of prisoners and other aspects of

the right to earn one's living in an occupation freely entered upon (minimum periods of service in the armed forces, privacy at work).

With specific regard to privacy at work, the Committee previously deferred its conclusion and asked for information to enable it to determine the extent to which human freedom and dignity are protected by legislation and the courts against intrusions into personal or private life that may be associated with or result from the employment relationship (Conclusions 2016; see also the questions in Conclusions 2008, 2012). In reply to its request, the current report provides information on Law No. 81/2018 regarding the regulation of telework. In particular, Article 5 of this law stipulates that in case of telework, the individual labour contract shall contain, among other elements, the program with which the employer has the right to check the activity of the teleworker and the concrete way of carrying out the monitoring by the employer. The report also refers to Article 39 e) of Law No. 53/2003 – Labour Code, which guarantees the right of the employee to dignity at work.

The Committee takes note of the information provided and considers that the situation is in conformity with Article 1§2 on this point.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 1§2 of the Charter on the ground that it has not been established that the national authorities have fulfilled their obligations to prevent labour exploitation of domestic workers.

Article 1 - Right to work

Paragraph 3 - Free placement services

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

In its previous conclusion the Committee considered that it had not been established that free placement services operated in an efficient manner. In particular, the Committee noted that the report did not provide information on the quantitative indicators, such as the number of vacancies notified to the employment service, the number of placements made and the placement rate. The Committee also asked what was the respective market shares of public and private employment services.

The Committee notes from the report that according to Article 1 of Law No. 202/2006 on the organisation and operation of the National Agency for Employment (NAE), as subsequently amended and supplemented, the NAE is a public institution of national interest, with legal personality, under the authority of the Ministry of Labour and Social Protection.

The county and Bucharest municipality employment agencies are decentralised public services, constituted at county level, as well as at the level of the municipality of Bucharest, and mainly have the following tasks: to ensure the registration of the jobseekers and the unemployed; to ensure registration of vacancies communicated by employers; to advise and guide jobseekers and connect employers with jobseekers in order to establish labour or work relations; to accredit the specialised service providers for the stimulation of employment; to provide information and advisory services for persons wishing to work in the member States of the European Union and in the States signatory of the Agreement on the European Economic Area, as well as in other countries with which Romania has concluded treaties. The county employment agencies and the Bucharest municipality employment agencies are subordinated to the NAE.

Regarding the accreditation of the specialised service providers for the stimulation of employment, this is carried out according to the provisions of Law No. 76/2002 and as provided by the accreditation criteria of the specialised service providers for the stimulation of employment, approved by the Government Decision No. 277/2002, as subsequently amended and supplemented. The specialised services for the stimulation of employment consist of information and advisory services and labour mediation services in the internal market.

The accredited specialised service providers for the stimulation of employment have the obligation to communicate on a monthly basis to the employment agencies in whose radius they have the headquarters, the data regarding the number of the unemployed placed in a job. The Committee asks whether these specialised service providers are private and charge fees.

As regards the quantitative indicators concerning the operation of free placement services, the Committee notes that the report does not provide information about the numbers of vacancies notified to the National Employment Agency or county services. The report refers to the "level of employment for vacancies reported by employers and registered with the NAE" and indicates that it stood at 65.9% in 2015 and at 76.15% in 2018. It also refers to the level of employment of all jobseekers registered with NAE and indicates that it stood at 34% in 2015 and 40% in 2018. The Committee asks what is the precise meaning of these indicators. It recalls that to assess the conformity of the situation with this provision, it needs information on the following quantitative indicators:

- the total number of jobseekers and unemployed persons registered with the NAE;
- the number of vacancies notified to the NAE;
- the number of persons placed via the NAE;
- the placement rate (i.e. the percentage of placements compared to the number of notified vacancies);
- the average time taken by the NAE to fill a vacancy;

- the number of placements by the NAE as a percentage of total recruitments in the labour market;
- the respective market shares of public and private services. Market share is defined as the number of placements made as a proportion of total recruitments in the labour market.

Furthermore, the Committee requests data on the ratio of placement staff to registered jobseekers.

In the meantime, in the absence of these indicators, the Committee considers that it has not been established that free employment services operate in an efficient manner and reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 1§3 of the Charter on the ground that it has not been established that employment services operate in an efficient manner.

Article 1 - Right to work

Paragraph 4 - Vocational guidance, training and rehabilitation

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

The Committee recalls that in the appendix to the letter of 27 May 2019 (whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities") no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

Article 1§4 guarantees the right to vocational guidance, continuing vocational training for employed and unemployed persons and specialised guidance and training for persons with disabilities. It is complemented by Articles 9 (right to vocational guidance), 10§3 (right of adult workers to vocational training) and 15§1 (right of persons with disabilities to vocational guidance and training), which contain more specific rights to vocational guidance and training.

As Romania has not accepted Article 10§3, the Committee assesses under Article 1§4 the conformity of the situation relating to the right of adult workers to vocational training in case the previous conclusion was one of non-conformity or a deferral.

Vocational guidance

As regards measures related to vocational guidance, the Committee refers to its assessment under Article 9 (Conclusions 2016), in which it considered that the situation was in conformity with the Charter.

Continuing vocational training

In its previous conclusion, the Committee reserved its position on continuing vocational training (Conclusions 2016). It previously (Conclusions 2003, 2008) noted the low level of participation in training programmes and observed that despite the adoption of new measures the participation rate of unemployed persons remained between 10% and 9% (Conclusions 2016).

The Committee notes from the current report that the participation rate of unemployed persons in training has remained low during the reference period. Notably, it was 10,97% in 2015, 8,15% in 2016, 8,31% in 2017 and 9,49% in 2018.

The report indicates that, according to Law no. 76/2002, all persons registered with the territorial employment agencies may benefit from the services provided, including vocational training. The report provides information as regards the number of unemployed persons participating in training during the reference period: 40 371 in 2015, 26 264 in 2016, 23 598 in 2017 and 22 011 in 2018. The Committee notes that the report specifies the reasons of the decrease (see report for details), and provides disaggregated figures for persons participating in on-the-job trainings (129 in 2015, 167 in 2016, 431 in 2017 and 3 364 in 2018).

With regard to measures regarding vocational training for employed persons, the Committee previously (Conclusions 2016) requested information on the organisation and implementation of continuing vocational training, including relevant figures such as the percentage of employees participating in training, gender balance and public and private expenditure for continuing vocational training (Conclusions 2012, 2016). The Committee held that if such information were not provided in the next report, there would be nothing to establish that the situation was in conformity with the Charter on this issue.

As the report does not provide any information in this respect, the Committee reiterates its questions and considers in the meantime that it has not been established that, during the reference period, the situation is in conformity with Article 1§4 of the Charter in this respect.

Vocational guidance and training for persons with disabilities

As regards measures related to vocational guidance and training of persons with disabilities, the Committee refers to its assessment under Article 15§1 (Conclusions 2020), in which it considered that the situation was not in conformity with the Charter on the ground that it had not been established that the right of persons with disabilities to mainstream training was effectively guaranteed. Accordingly, the Committee considers that the situation is not in conformity with Article 1§4 on the same ground.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 1§4 of the Charter on the following grounds:

- it has not been established that the right of employed persons to vocational training is effectively guaranteed;
- it has not been established that the right of persons with disabilities to mainstream training was effectively guaranteed.

Article 9 - Right to vocational guidance

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

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

Paragraph 1 - Vocational training for persons with disabilities

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

The Committee previously concluded that the situation in Romania was not in conformity with Article 15§1 of the Charter on the grounds that the right of persons with disabilities to mainstream education was not effectively guaranteed and it had not been established that the right of persons with disabilities to mainstream training was effectively guaranteed (Conclusions 2016).

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities"). The questions posed for this cycle of supervision focused exclusively on the education of children with disabilities.

The Committee recalls nonetheless that under Article 15 all persons with disabilities, irrespective of age and the nature and origin of their disabilities, are entitled to guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialized bodies, public or private.

Therefore, in its next cycle of supervision, the Committee will examine Article 15§1 issues as they apply to all persons with disabilities (not just as they apply to children).

Legal framework

The report states that Law no. 448/2006 on the protection and promotion of the rights of disabled persons, as subsequently amended in 2016 and 2017, protects persons with disabilities from discrimination in education. It stipulates that education within mainstream educational settings should be the priority.

Article 15, of the above-mentioned law provides that persons with disabilities have free and equal access to any form of education, irrespective of their disability , degree of disability or their educational needs. A person with disabilities or, as the case may be, the family or the legal representative shall be the main decision maker in choosing the training form and type, and the educational unit.

Art. 18 of the same law provides that, within the educational process, irrespective of the level, persons with disabilities shall have the right to:

a) educational support services;

b) technical equipment adapted to the handicap type and degree and the use thereof;

c) adapted furniture in classrooms;

d) school manuals and courses in accessible format for the pupils and students with sight difficulties;

e) the use of assistive equipment and software in taking exams of any type and level.

Law no. 448/2006 provides the obligation for public authorities to take specific measures to ensure access or persons with disabilities to educational units and institutions.

As regards the definition of disability the Committee has previously stressed the importance of moving away from a medical definition of disability towards a social definition. An early example is that endorsed by the World Health Organisation in its International Classification of Functioning (ICF 2001) which focuses on the interaction of health conditions, environmental factors and personal factors.

Article 1 of the UN Convention on the Rights of Persons with Disabilities (CRPD (2006) crystallises this trend by emphasizing that persons with disabilities include those with long term disabilities including physical, mental or intellectual disabilities which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Importantly, this means there is no a priori exclusion from inclusive education based on the type of disability. Indeed, Article 2 of the CRPD which prohibits discrimination "on the basis of disability" may be read to go further by including those who have had a record of disability in the past but who continue to be treated negatively and those who never had a disability but may nevertheless be treated by others as if they had a disability (the so-called "attitudinally disabled").

The Committee therefore asks the next report to clarify whether the assessment of disability in the fields of education and vocational training takes into account the personal and environmental factors interacting with the individual. These factors are particularly relevant when it comes to an assessment of "reasonable accommodation".

Access to education

The Committee previously concluded that the situation was not in conformity with the Charter on the grounds that the right of children with disabilities to mainstream education was not effectively guaranteed (Conclusions 2016).

According to the report in 2018 there were 658, 001 children with disabilities in Romania.

Further the report states that in the school year 2018-2019, there were 77 inclusive education centres and 4053 mainstream schools integrating children with special educational needs (SEN). Mainstream education includes a total number of 178 special integrated groups/classes attended by 1392 students in special integrated groups/classes. 23532 SEN students attend mainstream schools, study the mainstream curriculum and are assisted by support teachers, and a total number of 12646 students with disabilities who do not benefit from support teachers. Further there are 2065 home-schooled students.

According to the data collected by school inspectorates, there are 160 special education schools with a total number of 25 532 students registered, nationally.

The report states that there are 1429 support teachers at national level, which it points out is a very low number compared to the number of beneficiaries. Also, there are 649 speech therapy teachers at national level, insufficient to cover the number of children who need speech therapy.

The Committee notes from the Report of the Commissioner for Human Rights of the Council of Europe following her visit to Romania, November 2018 CommDH(2019) that despite noting some progress in the area of inclusive education, the Commissioner was concerned that the Romanian education system remains, to a large extent, segregated. According to her report official statistics show that out of 59930 children with disabilities enrolled in the current school year, 33930 attend mainstream education, 2131 are included in special classes or groups in mainstream schools, while 21779 are enrolled in special schools. The remaining children receive education in hospitals or are home-schooled. According to NGOs cited in the Commissioner's report, around one third of the special schools function as closed institutions, and special schools often fail to provide children with disabilities with the necessary skills for their inclusion in society. NGOs also assessed the number of children not receiving any form of education at around 20000. The Commissioner was furthermore concerned that children with disabilities continue to be denied access to mainstream schools, often at the initiative or with the support of parents of other children.

The Commissioner's interlocutors highlighted that the lack of funds enabling schools to provide reasonable accommodation, as well as the lack of adaptation of curricula and teaching methodologies and materials leave teachers to their own devices. They stressed that these deficiencies often force children with disabilities to drop out or to shift to home-schooling. The

Commissioner noted that in 2017-2018 there were 1406 itinerant and support teachers working nationwide, with some counties having only one or two such teachers. Her interlocutors agreed that the number of support teachers and the time spent by them with each child, of up to two hours per week, was extremely low compared to the existing needs.

The Committee notes in this respect that the UN Committee on the Rights of the Child in its Concluding Observations [CRC/C/RO/CO/5, 13 July 2017] expressed concern that children with disabilities are still placed in specialized institutions and classes and that teachers and professionals need more specialized training to be able to provide appropriate and individual support in inclusive classes.

The Committee asks for the Government's comments on this.

The Committee notes that the numbers of children with disabilities/SEN attending mainstream educational settings and the number of those attending special schools has not changed much over the reference period. Therefore in light of all the information available, it concludes that the situation is not in conformity with Article 15§1 of the Charter on the grounds that the right of children with disabilities to mainstream education is not effectively guaranteed.

In order to assess the effective equal access of children with disabilities to education, the Committee needs States parties to provide information, covering the reference period, on:

- the number of children with disabilities, including as compared to the total number of children of school age;
- the number and proportion of children with disabilities educated respectively in:
    - mainstream classes.
    - special units within mainstream schools (or with complementary activities in mainstream settings)
    - in special schools
- the number and proportion of children with disabilities out of education;
- the number of children with disabilities who do not complete compulsory school, as compared to the total number of children who do not complete compulsory school;
- the number and proportion of children with disabilities under other types of educational settings, including:
    - home-schooled children
    - attending school on a part time basis
    - in residential care institutions, whether on a temporary or long-term basis
- the drop-out rates of children with disabilities compared to the entire school population.

As regards measures in place to address the issue of costs associated with education the Committee asks whether children with disabilities or SEN are entitled to financial support to cover any additional costs that arise due to their disability.

In its previous conclusion the Committee concluded that the situation was not in conformity with the Charter on the grounds that it had not been established that mainstreaming of persons with disabilities is effectively guaranteed in vocational training (Conclusions 2016). The Committee asks the next report to provide updated information on the situation. Meanwhile it reiterates its previous conclusion.

Measures aimed at promoting inclusion and ensuring quality education

The report provides details of the National Strategy "A barrier-free society for people with disabilities " 2016-2020, approved by G.D. no. 655/2016 of September 14, 2016, which has as one of its priority objectives the promotion of inclusive education. Measures to be adopted in this respect include ensuring access for persons with disabilities to compulsory education, in adapted forms and contexts, based on the principles of inclusive education, in the communities in which they live, providing sufficient and quality individualized support services

at the level of mainstream and special education units, adapting the physical environment of education units and of other spaces with educational role, in order to ensure the access of people with different types of disabilities, facilitating transport of people with disabilities to school or other education and training spaces, promoting the concept of coach, shadow, for the disabled teenagers and young people, by training the education staff on their necessity and role in the education process, and developing and of teaching methods and materials.

The Committee recalls that Article 15§1 of the Charter makes it an obligation for States Parties to provide quality education for persons with disabilities, together with vocational guidance and training, and that priority should be given to inclusive education in mainstream school. States parties must demonstrate that tangible progress is being made in setting up inclusive and adapted education systems.

The Committee has recognised that "integration" and "inclusion" are two different notions and that integration does not necessarily lead to inclusion (Mental Disability Advocacy Centre (MDAC) v. Belgium Complaint No.109/2014, Decision on the admissibility and merits 16 October 2017, International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium Complaint No. 141/ 2017, Decision on the merits of 20 September 2020). The right to an inclusive education relates to the child's right to participate meaningfully in mainstream education.

The Committee notes that the UN Committee on the Rights of Persons with Disabilities, in its General Comment No. 4, (2016), on the Right to inclusive education, has stated that "inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences. Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion. Furthermore, integration does not automatically guarantee the transition from segregation to inclusion".

The Committee also recalls that inclusive education implies the provision of support and reasonable accommodations which persons with disabilities are entitled to expect in order to access schools effectively. Such reasonable accommodations relate to an individual and help to correct factual inequalities (MDAC v. Belgium, Complaint No.109/2014, Decision on admissibility and merits 16 October 2017 para 72). Appropriate reasonable accommodations may include: adaptations to the class and its location, provision of different forms of communication and educational material, provision of human or assistive technology in learning or assessment situations as well as non-material accommodations, such as allowing a student more time, reducing levels of background noise, sensitivity to sensory overload, alternative evaluation methods or replacing an element of the curriculum by an alternative element.

The Committee asks the States parties to provide information on how reasonable accommodation is implemented in mainstream education, whether and to what degree there is an individualized assessment of 'reasonable accommodation' to ensure it is adequately tailored to an individual's circumstances and learning needs, and to indicate what financial support is available, if any, to the schools or to the children concerned to cover additional costs that arise in relation to ensuring reasonable accommodations and access to inclusive education.

It asks in particular what measures are taken to ensure that teachers and assistants dealing with pupils and students with disabilities are adequately qualified.

It furthermore asks whether the qualifications that learners with disabilities can achieve are equivalent to those of other learners (regardless of whether learners with disabilities are in mainstream or special education or of whether special arrangements were made for them

during the school-leaving examination). The Committee also asks whether such qualifications allow persons with disabilities to go on to higher education (including vocational training) or to enter the open labour market. The Committee also asks the state to provide information on the percentage of disabled learners who go on to higher education or training. The Committee also asks what percentage of learners with disabilities enter the open labour market.

Remedies

The Committee notes from the report, that in 2018 6 cases alleging discrimination in education were decided (2 findings of discrimination) and 7 were pending. The Committee asks the next report to provide updated information on the remedies available in the case of discrimination on the ground of disability with respect to education (including access to education, the provision of adequate assistance or reasonable accommodation) and the relevant case-law.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 15§1 of the Charter on the ground that the right of children with disabilities to mainstream education and training is not effectively guaranteed.

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

Paragraph 2 - Employment of persons with disabilities

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

The Committee notes that the present report was asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities").

The Committee previously concluded that the situation was not in conformity with Article 15§2 of the Charter on the ground that persons with disabilities were not guaranteed effective access to the open labour market (Conclusions 2016).

Legal framework

The Committee refers to its previous conclusions (Conclusions 2012, 2016) for a description of the relevant legislation regulating the employment of persons with disabilities in employment in Romania. It recalls that Law No. 448/2006 explicitly sets out the right to reasonable accommodation in the workplace, both for persons with disabilities seeking employment and for those already in employment and provides protection against discrimination.

As regards the definition of disability the Committee notes that according to the ANED report (Academic Network of European Disability Experts) on the European Semester (published in 2018,) the disability evaluation system still uses medical/functional criteria, which restricts the participation of people with disabilities particularly in the labour market (by declaring them unable to work) and, in consequence, does not allow the possibility of intervention through specialized employment services. The Committee asks for the Government's comments on this

Access of persons with disabilities to employment

The Committee previously concluded that the situation was not in conformity with Article 15§2 of the Charter on the ground that persons with disabilities were not guaranteed effective access to the open labour market. It noted in this respect that the low employment rate of persons with disabilities (according to the report, 14.69% of all adults with disabilities aged 18 to 60 years in 2014)

According to the report at the end of 2018 there were 758,955 adults with disabilities, 314,603 who were aged between 19 and 59.

Further according to the report 45,007 persons with disabilities had a wage-earning activity,1 9,423 persons with disabilities had another type of income, 33,593 persons with disabilities are employed full-time, and 11,414 persons with disabilities are employed based on a part-time individual employment contract.

However according to the report such information does not capture the total number of persons with disabilities who are employed. Such data focus on persons with severe or marked disability who are exempt from wage taxes, pursuant to the Tax Code. Besides these persons, there are persons with moderate or mild disability who are employed but are not always willing to register their disability certificate with their employer, because they do not benefit from wage tax exemption.

732 authorised sheltered units employed 1,897 persons with disabilities and 124 persons with invalidity grade III; 0.26% of the total persons with disabilities, while the number of persons with disabilities employed in the open market was about 32,000.

The Committee notes from the ANED report (Academic Network of European Disability Experts) on the European Semester (published in 2018,) that according to ANED the disability employment rate remains below 50% and as low as 15.5% for those with severe disabilities.

Both unemployment and economic activity rates are very low, compared to the EU average, and there is a high risk of early exit from the labour force among older workers with disabilities. Inactivity rates are extreme among persons with more severe levels of impairment. The number of people with disabilities employed by the end of December 2017 was 34,271 compared to 31,333 in 2015, 32,734 in 2016, and 33,882 in mid-2016. These data refer only to persons registered as disabled with the employment service and represent a smaller population than those declaring activity limitations in EU-SILC.

The Committee notes that the report of the Commissioner of Human Rights of the Council of Europe, report following her visit to Romania in 2018 (CommDH(2019)5 states that (citing official statistics) on 30 September 2017, the employment rate of persons with disabilities was of only 17.5%, compared to the overall rate of 63.5%.3.

The Committee asks for the Governments comments on these observations.

The Committee finds the data in the report on the number of persons with disabilities in employment difficult to comprehend but it notes that there is a very low level of persons with disabilities employed in the open labour (approximately 33,000) market in light of the total number of persons with disabilities of working age (314,603). The Committee therefore asks that the next report provide up-to-date figures relating to the reference period, on the total number of persons with disabilities of working age , specifying how many of them are active and in work (in the public and private sector, and in the open labour market or in sheltered employment) and how many are unemployed. In the meantime it reiterates its previous conclusion, that the situation is not in conformity with the Charter on the grounds that the employment rate of persons with disabilities is too low and indicates that persons with disabilities are not guaranteed effective access to the labour market.

Measures to promote and support the employment of persons with disabilities

The Committee previously noted a range of measures in place to encourage and support the employment of persons with disabilities; such as counselling, wage subsidies, training, certification of competences acquired in non-formal and informal learning contexts, consultancy and assistance to begin an independent activity or to start-up a business.

The Committee further recalls that the reserved quota system requires all authorities and public institutions and public or private legal persons with at least 50 employees to employ a minimum share of 4% of persons with disabilities. The Committee previously asked the next report to provide information on effective compliance with the reserved quotas, how compliance with the requirement was monitored (Conclusions 2016).

The report states that as a result of amendments to the legislation in 2017 public authorities and institutions, legal public or private entities who do not hire persons with disabilities according to the law must pay to the state budget an amount equivalent to the minimum national gross wage multiplied by the number of jobs unoccupied by persons with disabilities. The legislation eliminated the option that authorities and public and private institutions had; to purchase goods or services from sheltered units instead of either employing persons with disabilities or paying a contribution to the state budget.

The National Agency for Fiscal Administration is responsible for monitoring compliance with these provisions.

The Committee asks the next report to indicate whether this has resulted in more person being employed under the quota system.

According to the report of the Commissioner of Human Rights of the Council of Europe, following her visit to Romania in 2018 (CommDH(2019)5 this measure has led to the closing of most sheltered workshops and the loss of some 2 000 jobs held by persons with disabilities. The Committee asks for the Government’s comments on this.

The report states that a new incentive was created to stimulate hiring – the obligation on employers to organize employment competitions only for applicants with disabilities, which does not exclude their participation in all other employment competitions organised organized by the employer. The Committee asks whether this obligation applies to all employers and how many persons with disabilities have been recruited through these competitions.

The Committee again asks whether the reasonable accommodation obligation has been implemented in practice.

The National Strategy “A barrier-free society for people with disabilities”, 2016-2020 and the Operational Plan for its implementation, was approved by GD no. 655/2016. One of the action lines is employment, whose overall objective is to ensure the access of persons with disabilities to an open, inclusive and accessible work environment, both in the public and in the private sectors, while ensuring their effective access to support services to increase employment.

The Committee requests that the next report provide information on the outcome of the strategy.

Remedies

The Committee notes the information in the report on discrimination cases in employment (not just on grounds of disability). It considers the number of cases low. It asks the next report to provide updated information on remedies as well as examples of relevant case law. It recalls that legislation must confer an effective remedy on those who have been found to be discriminated against on grounds of disability and denied reasonable accommodation

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 15§2 of the Charter on the ground that persons with disabilities are not guaranteed effective access to employment.

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

Paragraph 3 - Liberalising regulations

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

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

Paragraph 4 - Right of nationals to leave the country

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

Article 20 - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

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

The Committee notes that this report responds to the targeted questions on this provision, which relate specifically to equal pay (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities"). The Committee will therefore focus specifically on this aspect. It will also assess the replies to all findings of non-conformity or deferral in its previous conclusion.

Obligations to guarantee the right to equal pay for equal work or work of equal value

Legal framework

In its previous conclusion (Conclusions 2016), the Committee noted that the situation was in conformity with the Charter with regard to the legal framework on the principle of equality. The Committee notes from the report that no major legislative changes were made in this respect during the reference period. The Committee points out that Article 5 of the Labour Code (Law No. 53/2003, published in Official Journal No. 345 of 18 May 2011) lays down the principle of equal treatment for all employees and prohibits any direct or indirect discrimination on several grounds including gender. Under Article 6(3) of the Labour Code, any gender-based discrimination is prohibited for equal work or work of equal value. The same principle is enshrined in Article 7 (1) of Law No. 202/2002 on Equal Opportunities and Treatment for Women and Men, which guarantees equal opportunities and treatment for women and men in all aspects and phases of the employment relationship, including equal pay for work of equal value.

The Committee notes that the situation is still in conformity with the Charter in this respect.

Effective remedies

The Committee recalls that domestic law must provide for appropriate and effective remedies in the event of alleged pay discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court. Effective access to courts must be guaranteed for victims of pay discrimination. Therefore, proceedings should be affordable and timely. Anyone who suffers pay discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and to act as a deterrent. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and from being sufficiently dissuasive is contrary to the Charter. The burden of proof must be shifted. The shift in the burden of proof consists in ensuring that where a person believes she or he has suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of non-discrimination (Conclusions XIII-5, Statement of interpretation on Article 1 of the 1988 Additional Protocol). Retaliatory dismissal in cases of pay discrimination must be forbidden. Where a worker is dismissed on grounds of having made a claim for equal pay, the worker should be able to file a complaint for dismissal without valid reason. In this case, the employer must reinstate her/him in the same or a similar post. If reinstatement is not possible, the employer must pay compensation, which must be sufficient to compensate the worker (i.e. cover pecuniary and non-pecuniary damage) and to deter the employer (see in this respect collective complaints Nos. 124 to 138, University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, 5-6 December 2019).

The Committee takes note of the information provided in the report and asks for detailed, up-to-date information in the next report on the *remedies* available to victims of gender pay discrimination in employment.

Regarding the shift in *the burden of proof* in cases of gender pay discrimination, the report states that, in accordance with law No. 202/2002 relating ti equality between women and men (article 35), the burden of proof lies with the person against whom the intimation/complaint was filed or, as the case may be, the request for summons, for facts that allow to presume the existence of direct or indirect discrimination, which must prove non-violation of the principle of equal treatment between women and men. The Committee asks how the principle of shifting of the burden of proof is applied in practice, for example, if it is systematically applied in the cases related to pay discrimination.

The report provides no information as regards the *rules on compensation* in the event of a violation of the principle of equal pay. The Committee refers to its conclusion under Article 1§2 (Conclusions 2016), in which it noted that the courts had not set an upper limit on the amount of compensation that could be awarded in gender discrimination cases. However, the Committee asks for confirmation in the next report that there is no upper limit on the compensation that can be awarded in cases of gender-based pay discrimination. It also asks whether the obligation to compensate the difference of pay is limited in time or is awarded for entire period of unequal pay, and if there is the right to compensation for pecuniary and non-pecuniary damages. In addition, it asks for examples of compensation awarded by the courts in cases of gender pay discrimination. The Committee points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Romania is in conformity with Article 20 of the Charter in this respect.

The Committee asks for the next report to state what rules apply in the event of dismissal in retaliation for a complaint about equal pay.

It also asks whether sanctions are imposed on employers in the event of gender pay discrimination.

Pay transparency and job comparisons

The Committee recalls that pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value. Transparency contributes to identifying gender bias and discrimination and it facilitates the taking of corrective action by workers and employers and their organisations as well as by the relevant authorities. States should take measures in accordance with national conditions and traditions with a view to ensuring adequate pay transparency in practice, including measures such as those highlighted in the European Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, notably an obligation for employers to regularly report on wages and produce disaggregated data by gender. The Committee regards such measures as indicators of compliance with the Charter in this respect. The Committee also recalls that, in order to establish whether work performed is equal or of equal value, factors such as the nature of tasks, skills, as well as educational and training requirements must be taken into account. States should therefore seek to clarify this notion in domestic law as necessary, either through legislation or case law. In this respect, job classification and evaluation systems should be promoted and where they are used, they must rely on criteria that are gender-neutral and do not result in indirect discrimination (see in this respect Complaints Nos.124 to 138, UWE, *op. cit*.).

The report contains no information regarding *pay transparency* on the labour market. However, the Committee notes from the national report on gender equality in Romania drawn up by the European Network of Legal Experts in Gender Equality and Non-Discrimination (2019) that no pay transparency measures are implemented in Romania.

As regards *parameters for establishing the equal value of the work performed*, the report indicates that, according to Article 4(f) of Law No. 202/2002 on Equal Opportunities and Treatment for Women and Men, work of equal value means the remunerated activity which, following the comparison (based on the same indicators and the same units of measurement) with another activity, reflects the use of similar or equal professional knowledge and skills and the submission of a quantity equal or similar intellectual and/or physical effort. The Committee also takes note of the information provided in the comments of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2019 (108th session of the International Labour Conference) concerning Convention No. 100 on Equal Remuneration (1951), in which it is stated that under Framework Law No. 284/2010 on the unitary pay system for public sector employees, the basic wage scale is established on the basis of a job evaluation, according to the following criteria: knowledge and experience; complexity of tasks; creativity and diversity of activities; impact of decisions; influence; co-ordination and monitoring; contacts and communication; conditions of work; incompatibility; and special regimes. The Committee asks the next report to contain more information on the parameters for establishing the equal value of work performed in the public and private sectors.

The Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter, and does so therefore every two years (under thematic group 1 "Employment, training and equal opportunities", and thematic group 3 "Labour rights"). Articles 20 and 4§3 of the Charter require the possibility to make job comparisons across companies (see in this respect Complaints Nos. 124 to 138, UWE, op. cit.). The Committee asks whether it is possible to make pay comparisons across companies in equal pay litigation cases. In order to clarify this issue, the Committee considers that provision should be made for the right to challenge unequal remuneration resulting from legal regulation and collective agreements. In addition, there also should be the possibility to challenge unequal remuneration resulting from internal pay system within a company or a holding company, if remuneration is set centrally for several companies belonging to such holding company.

The Committee notes in this regard, from the information provided in the observations by the ILO's Committee of Experts referred to above that labour legislation which includes the principle of equal remuneration for work of equal value applies to all workers and employers whether or not they are covered by collective agreements. It also notes that under Law No. 62/2011 on social dialogue, terms of collective labour agreements may establish rights and obligations only within the limits and conditions provided by law (Article 132(1)). Under Article 132 of Law No. 62/2011, clauses in collective agreements which breach the law are deemed null and void.

The Committee requests that the next report indicate whether a real and/or hypothetical comparator of remuneration is required by law to establish or prove a difference in treatment.

The Committee asks again for information in the next report on the measures adopted to guarantee pay transparency in the labour market (notably the possibility for workers to receive information on pay levels of other workers), specifying in particular what time limits are set to make the progress demanded and the criteria applied to measure progress. In the meantime, it reserves its position on this point.

Enforcement

The report states that the Labour Inspectorate conducts preventive checks to ensure that Law No. 202/2002 on Equal Opportunities and Treatment for Women and Men (as amended) is upheld.

The Committee takes note that the Agency for Equal Opportunities between Women and Men was re-established in 2015 (by Law No. 229/2015 amending and supplementing Law No. 202/2002). As a legal entity, it is a specialised body of the central public administration under the Ministry of Labour and Social Protection, and its purpose is to promote the principle of

equal opportunities and treatment for women and men so as to eliminate all types of gender discrimination from all national policies and programmes.

The Committee requests that the next report provide further information about how equal pay is ensured, notably, about the monitoring activities conducted in this respect by the Labour Inspectorate, the Agency for Equal Opportunities between Women and Men and other competent bodies.

Obligations to promote the right to equal pay

The Committee recalls that in order to ensure and promote equal pay, the collection of high-quality pay statistics broken down by gender as well as statistics on the number and type of pay discrimination cases are crucial. The collection of such data increases pay transparency at aggregate levels and ultimately uncovers the cases of unequal pay and therefore the gender pay gap. The gender pay gap is one of the most widely accepted indicators of the differences in pay that persist for men and women doing jobs that are either equal or of equal value. In addition, to the overall pay gap (unadjusted and adjusted), the Committee will also, where appropriate, have regard to more specific data on the gender pay gap by sectors, by occupations, by age, by educational level, etc. The Committee further considers that States are under an obligation to analyse the causes of the gender pay gap with a view to designing effective policies aimed at reducing it (see in this respect Complaints Nos.124 to 138, UWE, *op. cit*.).

The Committee takes note of the launch in 2018 of the National Strategy promoting equal opportunities between women and men for 2018-2021 (Government Decision No. 365/2018), accompanied by a comprehensive action plan for its implementation. The Committee asks for information in the next report on the implementation of this strategy and its results.

The report states that according to the Household Labour Force Survey, the employment rate of women in the 15-64 age group was 55.8% in 2017 (compared to 53.2% in 2015), while the rate for men stood at 71.8% (compared to 69.5% in 2015). The Committee also notes that the unemployment rate for men (5.6%) is higher than that for women (4%) and is on a downward trend (7.5% and 5.8% respectively in 2015).

The Committee notes from Eurostat data that the gender pay gap was 5.6% in 2015, 4.8% in 2016, 2.9% in 2017 and 2.2% in 2018 (compared to 8.5% in 2008). It notes that this gap was well below the average for the 28 European Union countries, i.e. 15% in 2018 (data as of 29 October 2020).

The report states that the gender pay gap is partly the result of the fact that women work fewer hours on average, mainly owing to maternity leave and parental leave, which can last up to two years.

The Committee asks for updated information in the next report on the specific measures and activities implemented to promote gender equality and reduce the gender pay gap, and on the results achieved.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Romania is in conformity with Article 20 (c) of the Charter.

Partly dissenting opinion of Barbara KRESAL relating to Article 20 (Romania)

I cannot agree with the conclusion that the situation in Romania is in conformity with Article 20 of the Charter. My dissent is limited only to the last part of the assessment which appears in the Section 'Obligations to promote the right to equal pay'. In my opinion, the Committee should defer its conclusion and request additional information.

It is true that unadjusted gender pay gap in Romania has decreased in the reference period and that it is very low, minimal, but the unexplained gender pay gap is very high, 17.2% (2014 data, see the Eurostat study "A decomposition of the unadjusted gender pay gap using Structure of Earnings Survey data, 2018), the employment rate of women is quite low, especially in comparison with the employment rate of men, the unadjusted gender pay gap in the private sector is quite high, 11.5% (2019 data, see the Eurostat "Gender pay gap statistics, Statistics explained"), the unadjusted gender pay gap in certain sectors is above 20% and even 30% (2019 data, see Eurostat, *op. cit.*), and there are other indications that only by taking into account the overall unadjusted gender pay gap, the situation cannot be assessed in appropriate manner. The State Party should provide additional information, relevant studies and research if they exist and offer reasonable explanations for such developments.

The State Party must adequately promote the right to equal pay with a view to ensure its effective realisation in practice, and it must accordingly demonstrate adequate 'results' in terms of the relevant indicators. These indicators are used to assess the effectiveness of the policies and measures adopted. The most widely used indicator in this respect is the unadjusted gender pay gap. However, there are also other important indicators.

Unequal pay is a complex problem. Only a combination of various indicators can give a better picture and allow for a better assessment (for example, if the employment rate of women is high, the gender pay gap is usually also higher and *vice versa*, therefore, the relative gender pay gap in correlation with the female employment rate is probably more relevant than absolute figures; in addition to the unadjusted gender pay gap, the adjusted gender pay gap should also be taken into account, together with the decomposition and analysis of the explained and unexplained gender pay gap, as well as the overall gender gap in earnings, differences between sectors of activity, occupations, age groups and similar, the female employment rate etc.). The Committee recognises the complexity of the concept of (un)equal pay and in this context refers to various indicators that can be used in the assessment. However, the Committee's assessment of the situation in Romania as regards the obligation to promote the right to equal pay is then mainly based only on the unadjusted gender pay gap, its changes over time and its comparison with the EU average, without sufficiently taking into account various other relevant indicators mentioned above.

Article 24 - Right to protection in case of dismissal

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

Scope

The Committee asks the next report to provide updated information as regards the personal scope of protection against dismissal. In particular, it asks what categories of persons can be excluded from such protection (e.g. workers on probationary period).

The Committee addressed specific targeted questions to the States (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities") concerning strategies and measures that exist or are being introduced to ensure dismissal protection for workers (labour providers), such as "false self-employed workers" in the "gig economy" or "platform" economy. The Committee notes that the report does not provide information in this respect. It asks what safeguards exist to ensure that employers hiring workers in the platform or gig economy do not circumvent labour law as regards protection against dismissal on the grounds that a person performing work for them is self-employed, when in reality, after examination of the conditions under which such work is provided it is possible to identify certain indicators of the existence of an employment relationship.

Obligation to provide valid reasons for termination of employment

The Committee notes that there have been no changes to the situation which it has previously (Conclusions 2016) found to be in conformity with the Charter. The Committee asks the next report to provide updated information concerning termination of employment and age.

Prohibited dismissals

As regards dismissal on the ground of temporary absence from work due to illness, the Committee notes from the report that dismissal cannot be ordered during temporary work incapacity, established by a medical certificate. In reply to its question of whether a time limit is placed on protection against dismissal in such cases, the Committee notes from the report that there is no statute of limitations for these provisions. The Committee further notes from the report that according to Article 60 of the Labour Law dismissal may not be ordered for the duration of temporary disability, as established in a medical certificate according to the law. The Committee asks what rules apply in case of termination of employment on the ground of long-term or permanent disability, such as the procedure for establishing long-term disability and the level of compensation paid in such cases.

Remedies and sanctions

In reply to the Committee's question, the report states that according to Article 80 of the Labour Law, at the employee's request, the court having ordered the cancellation of the dismissal shall restore the parties to the status existing before the issuance of the dismissal document. In case the employee does not request the reinstatement in the situation prior to the issuance of the dismissal document, the individual labour contract shall be rightfully terminated at the date when the judgment remains final and irrevocable.

The Committee recalls that under the Charter, workers dismissed without valid reason must be granted adequate compensation or other appropriate relief. Compensation systems are considered to comply with the Charter when they provide for:

- reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body;
- the possibility of reinstatement of the worker; and/or

- compensation of a high enough level to dissuade the employer and make good the damage suffered by the victim (Finnish Society of Social Rights v. Finland, Complaint No. 106/2014, decision on admissibility and the merits of 8 September 2016, §45; Conclusions 2016, Bulgaria).

The Committee further recalls that (Statement of interpretation on Article 8§2 and 27§3, Conclusions 2011) compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues, and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.

The Committee asks the next report to provide updated information regarding remedies, in the light of the above statement.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Romania is in conformity with Article 24 of the Charter.

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

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

The Committee recalls that in its letter requesting national reports it stated that no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

The Committee previously took note (Conclusions 2016) of the Romanian legislation on the protection of employees' claims in the event of employer insolvency. It also noted that the employees whose financial claims remain unsettled can apply to the Wage Guarantee Fund for their payment.

In its previous conclusion, the Committee asked for information on the average duration of the period from when a claim is lodged until the worker is paid and on the overall proportion of workers' claims which are satisfied by the guarantee institution and/or privilege system. The Committee points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Romania is in conformity with Article 25 of the Charter in this respect.

The report indicates that the total amount of salary claims paid by the Wage Guarantee Fund shall not exceed three gross national average wages for each employee. The Committee points out that States Parties may limit the protection of workers' claims to a prescribed amount. Such amount shall nonetheless 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 Committee therefore asks the next report to confirm that the total amount of salary claims paid by the Wage Guarantee Fund corresponds to a minimum of eight weeks' wage.

The report further indicates that the county employment agencies and the Bucharest Municipality Employment Agency shall establish the amount of the wage claims due to employees and shall pay such amounts, upon written application by the administrator or by the receiver of the insolvent employer or, as appropriate, by the employees of the insolvent employer or by the organisations supporting their interests. Any such applications shall be solved within 45 days from their registration with the county employment agency or with the Bucharest Municipality Employment Agency, as appropriate. The Committee asks the next report to confirm that 45 days is the maximum duration of the period from when a claim is lodged until the worker is effectively paid.

The Committee notes that the report does not contain the information requested on the overall proportion of workers' claims which are satisfied by the guarantee institution and/or privilege system. Since the report does not provide all information requested, the Committee holds that it has not been established that workers' claims in cases of insolvency are adequately protected in practice.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 25 of the Charter on the ground that it has not been established that workers' claims in case of insolvency of the employer are adequately protected in practice.