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European Social Charter

European Committee of Social Rights

Conclusions 2016

ROMANIA

This text may be subject to editorial revision.

The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

The following chapter concerns Romania, which ratified the Charter on 7 May 1999. The deadline for submitting the 15th report was 31 October 2015 and Romania submitted it on 3 March 2016. The Committee received on 22 December 2015 observations from the International Organisation of Employers (IOE) expressing its perspective on the application of Article 24.

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 concerns the following provisions of the thematic group "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 of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

Romania has accepted all provisions from the above-mentioned group except Articles 10, 15§3, 18§1, 18§2, 18§5.

The reference period was 1 January 2011 to 31 December 2014.

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

– 6 conclusions of conformity: Articles 1§1, 9, 18§3, 18§4, 20 and 24;

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

In respect of the other 2 situations related to Articles 1§2 and 25, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Romania under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

Article 20

- In April 2014 the Department for Equality of Opportunities between Women and Men (DEOWM) was established to monitor the enforcement of the Gender Equality Law.

The next report will deal with the following provisions of the thematic group "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 report should also contain information requested by the Committee in Conclusions 2015 in respect of its findings of non-conformity due to a repeated lack of information:

- the right of children and young persons to protection – prohibition of employment under the age of 15 (Article 7§1);
- the right of children and young persons to protection – inclusion of time spent on vocational training in the normal working time (Article 7§6),
- the right of children and young persons to protection – paid annual holidays (Article 7§7),
- the right of employed women to protection of maternity – illegality of dismissal during maternity leave (Article 8§2),
- the right of the family to social, legal and economic protection (Article 16).

The deadline for submitting that report was 31 October 2016.

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 decreased from 2011 to 2012 from 1.1% to 0.6%. During the two following years, the GDP growth rate recovered reaching 3.5% in 2013 and 3.0% in 2014. The GDP growth rate was well beyond the EU 28 average which stood at 1.4% in 2014.

The overall employment rate increased slightly during the reference period, namely from 59.3% in 2011 to 61.0% in 2014. This rate was still below the EU 28 average rate which stood at 64.9% in 2014.

The male employment rate increased from 65.2% in 2009 to 68.7% in 2014. Despite this progress the rate was still below the EU 28 average of 70.1% in 2014. The female employment rate also increased, namely from 52.0% in 2009 to 53.3% in 2014. This rate was below the EU 28 average rate of 59.6%. The employment rate of older workers increased from 42.6% in 2009 to 43.3% in 2014 which was still well below the EU 28 average rate of 51.8% in 2014.

The unemployment rate decreased from 7.2% in 2011 to 6.8% in 2014 thus standing well below the EU 28 average rate of 10.2%.

The youth unemployment rate remained practically stable, even though at a relatively high level (23.9% in 2011; 24.0% in 2014).

During the reference period the long-term unemployment rate (as a percentage of the active population aged 15 – 74) also remained practically stable (2.9% in 2011; 2.8% in 2014).

The Committee notes that the second half of the reference period was marked by a robust growth rate in Romania. The unemployment rate remained relatively low even though the youth unemployment rate remained comparably high.

Employment policy

Romania's employment policies are guided by the National Employment Strategy 2014 – 2020 which is built on the EU 2020 Employment Strategy. Proposed objectives of this strategy include a) the reduction of the youth unemployment as well the increase of the participation of elderly in the labour market, b) the increase of women's participation in the labour market as well as the increase of persons of vulnerable groups such people with disabilities and Roma in the labour market by developing measures which combine social support and activation. In the next report, the Committee requests to provide statistical data with respect to the achievements of these objectives.

In 2013, Romania adopted the Youth Guarantee Implementation Plan 2014 – 2015, which is meant to offer young people up to 25 years within four months after registration a good quality offer of employment or of an adequate education. Again, the Committee requests in the next report figures with respect to the implementation of this plan.

The legal framework was amended by Law no. 250/2013 supplementing Law no 76/2002 on the unemployment insurance system and employment stimulation and amending Law no. 116/2002 on preventing and combating social marginalisation. This legal framework regulates measures designed both to promote employment and to increase employability including for young and Roma job seekers, and to prevent unemployment and to protect persons registered with the unemployment insurance system.

According to Eurostat, public expenditure on active labour market policies in Romania amounted to 0.25% of GDP in 2013 which was still below the EU 28 average (where the

average public spending on active labour market measures as a percentage of GDP was 1.8% in 2011).

As for the monitoring of the implementation and efficiency of labour market measures, the Committee takes note of the performance indicators agreed upon every year between the relevant Ministry and the National Employment Agency and the achievements provided for the year 2014.

The Committee notes the robust growth rate in Romania in the years 2013 and 2014. It recognises the introduction of legislative and organisational measures during the reference period with a view to giving employment opportunities particularly to vulnerable groups such as young persons, people with disabilities and Roma.

Conclusion

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 submitted by Romania.

1. Prohibition of discrimination in employment

The Committee previously asked for up-to-date information on the legal framework prohibiting discrimination, discrimination cases before the courts and the National Council for Combatting Discrimination (NCCD) and measures taken to eliminate discrimination in employment. The report does not provide the information requested. It only provides examples of cases involving discrimination of persons with disabilities as well as information on projects developed in the field of anti-discrimination (Appendix 3,4 and 5 to the report). The Committee reiterates its previous questions.

The Committee further sought information on the types of employment/activities foreigners were excluded from on the grounds that they involve the exercise of public authority (Conclusions 2012). The report does not provide the requested information. The Committee recalls that the only jobs from which foreigners may be banned are therefore those that are inherently connected with the protection of public interest or national security and involve the exercise of public authority (Conclusions 2006, Albania). The Committee underlines that if the necessary information is not provided in the next report there will be nothing to demonstrate that the situation is in conformity with the Charter.

The Committee asks information on any concrete positive measures/actions taken or envisaged to promote equality in employment and to combat all forms of discrimination in employment.

The Committee notes from the Report on Romania 2015 of the European Equality Law Network that even if according to the Anti-discrimination Law the burden of proof lies with the defendant, the case law of the NCCD is not consistent on this matter, leaving the onus of proof on the complainants in a significant number of cases. The Committee asks how the courts have interpreted and applied the provisions on the burden of proof.

With regard to compensation granted to victims of discrimination, the Committee noted previously that there is no upper limit on compensation in cases of discrimination and the amount is determined by courts. The Committee notes from the Report on Romania 2015 of the European Equality Law Network that the NCCD is competent to issue only administrative warnings or recommendations without any financial penalty. The same report indicates that there is no policy to follow up and engage with the perpetrators to secure the enforcement and prevent further discrimination. The Committee asks information on the level of compensation granted by courts and/or the NCCD in discrimination cases.

The Committee requests that the next report provide information 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.

2. Prohibition of forced labour

Work of prisoners

The Committee notes that the current report does not answer the questions concerning work of prisoners raised in its Statement of Interpretation on Article 1§2 in the General Introduction (Conclusions 2012). Consequently, the Committee reiterates its request that the next report include the relevant information on the points raised in the Statement of Interpretation in which it points out that "Prisoners' working conditions must be properly regulated, particularly if they are working, directly or indirectly, for employers other than the prison

service. In accordance with the principle of non-discrimination enshrined in the Committee's case-law, this supervision, which may be carried out by means of laws, regulations or agreements (particularly where companies act as subcontractors in prison workshops), must concern pay, hours and other working conditions and social protection (in the sphere of employment injury, unemployment, health care and old age pensions)" (Conclusions 2012). The Committee points out that should the next report fail to provide the requested information nothing will prove that the situation in Romania is in conformity with Article 1§2 of the Charter with regard to the work of prisoners.

Domestic work

The Committee notes that the current report fails to answer the questions concerning domestic work raised in its Statement of Interpretation of Article 1§2 in the General Introduction to Conclusions 2012. Consequently, the Committee reiterates its request that the next report include the relevant information on the points raised in the Statement of Interpretation where it draws attention to the existence of forced labour in the domestic environment and in family enterprises, and in particular to the legislation adopted to combat this type of forced labour and the measures taken to apply it. The Committee points out that should the next report fail to provide the requested information nothing will prove that the situation in Romania is in conformity with Article 1§2 of the Charter with regard to this point.

3. Other aspects of the right to earn one's living in an occupation freely entered upon

Minimum periods of service in the Armed Forces

In its previous conclusion (Conclusions 2012), the Committee pointed out that any minimum period of service in the armed forces must be of a reasonable duration and in cases of longer minimum periods due to education or training that an individual has benefited from, the length must be proportionate to the duration of the education and training. Likewise any fees/costs to be repaid on early termination of service must be proportionate. As the current report fails to provide any information on the situation in Romania from this point of view, the Committee asks that the next report provide updated information in this respect. The Committee points out that should the next report fail to provide the requested information nothing will prove that the situation in Romania is in conformity with Article 1§2 of the Charter with regard to this point.

Requirement to accept the offer of a job or training

According to the report, the assumption that the limitation of the right to unemployment allowance in the event that an unemployed person refuses a job would indirectly lead to a restriction of the right to work, is wrong. The report claims that job offers proposed by employment agencies are correlated to the level of education and training of the unemployed. Pursuant to the relevant legislation, payment of unemployment allowances granted to beneficiaries shall cease on the date of unjustified refusal of employment according to the level of training or education in a workplace located within a distance not exceeding 50 km from the locality of residence (Article 44 (d) of Law No. 76/2002 on the unemployment insurance system and employment stimulation). The notion of unjustified refusal, as explained by Article 44 (d) and (e) of the Law, is the situation where the beneficiary of unemployment benefit does not accept the solutions with regard to employment, training or re-training offered in accordance with the needs of the vocational guidance or employment services (Government Decision No. 174/2002 approving the methodological rules for the enforcement of Law no. 76/2002 on the unemployment insurance system and employment).

The Committee takes note of the information provided. The Committee asks that the next report include relevant information on the remedies that may be used to challenge the

decision to suspend unemployment benefits on grounds that the beneficiary has refused a job offer.

Privacy at work

In its Conclusions 2008 and 2012, the Committee asked for information to enable it to determine how far 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. As the current report does not provide this information, the Committee reiterates its request to include in the next report the relevant information on the points raised in the Statement of interpretation on Article 1§2 in the General Introduction to Conclusions 2012 and decides to defer its conclusion.

Conclusion

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

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 (Conclusions 2012), the information provided were not sufficient to assess the effectiveness and capacity of employment services; the Committee therefore deferred its conclusion and considered that the absence of the information required amounts to a breach of the reporting obligation entered into by Romania under the Charter. The Committee highlighted that the Government consequently has an obligation to provide the requested information in the next report on this provision.

The report refers to Act No. 202/2006, as further amended and supplemented, on the organisation and functioning of the National Employment Agency (NEA). In reply to a Committee's request, the report provides information on the organisation of the employment service across the country. In this context, it is specified that county employment agencies and the Bucharest Municipality employment agency carry out their responsibilities under the control of NEA. It is pointed out that in order to fulfil their duties, county employment agencies and the Bucharest Municipality employment agency may set-up local employment agencies, training centres, working points and units.

According to the report, in 2015 NEA had 2,142 employees, of which 1,521 working directly with clients. The Committee takes note of this information. However, it falls outside the reference period. In its previous conclusion, the Committee asked the number of employment services staff in relation to the number of job seekers. The report does not provide this figure. Nor does the report specify how many job seekers or vacancies were registered by the employment services during the reference period and the relevant placement rate. The Committee considers that this lack of information does not allow to assess the effectiveness of employment services in Romania. It asks that this information is provided in the next report for the different years of the reference period.

In its previous conclusion, the Committee asked how private employment agencies are licensed, operate and co-ordinate their work with the public employment service. The report refers to the accreditation of *providers of specialist employment stimulation services*. Accreditation is delivered by NEA through local agencies pursuant to Act No.76/2002, in compliance with the accreditation criteria established by Government's Decision No.277/2002. Accredited providers may be public and private legal persons, or natural persons. The services provided in this context consist in information and counselling services and job-matching services on the labour market. The Committee asks that the next report provides information on the respective markets shares of public and private services (market share is measured as the number of placements effected as a proportion of total hirings in the labour markets).

From another source (Recommendations of the European Council of 2014 and 2015 on the National Reform Programme of Romania and delivering a Council opinion on the Convergence Programme of Romania – documents 2014/C 247/21 and 2015/C 272/01), the Committee notes that a) *"the quality of public job search and retraining services is still low, despite some small-scale measures. Limited resources within the public employment service and a lack of measurement of performance constrain the efficient delivery of personalised services to jobseekers, employer services and the integration of active and passive labour market policies"* (cf. Recommendation of 2014); b) *"in order to allow for personalised services and more coherent delivery across target groups, the Public Employment Service would need increased capacity, in particular in terms of staffing, and an integrated delivery framework for measures co-financed through European Structural and Investment funds"* (cf. Recommendation of 2015).

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 free placement 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.

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.

Equal treatment

The Committee previously noted that free and equal access to vocational guidance and training was guaranteed to all, including nationals of other States Parties to the Charter who are lawfully resident or regularly working in Romania (Conclusions 2012, 2008).

Vocational guidance

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

Continuing vocational training

According to the report, pursuant to the Law No. 76/2002, as amended, the National Employment Agency provides training for jobseekers (Article 57§1c), that is their initiation, qualification, re-training, improvement and specialisation (Article 63§2). In its previous conclusions, the Committee had noted the low level of participation to these training programmes (Conclusions 2003, 2008) and had asked for information on the implementation of measures aimed at improving training activities and increasing the number of participants (Conclusions 2003, 2007, 2008, 2012). It notes from the report that, despite the adoption of certain new measures, in particular the amendment of the legal framework in 2014, the participation rate of unemployed persons remained low: it was 10.89% in 2011, 10.46% in 2012 and 9.57% in 2014.

As regards continuing vocational training for employed persons, the report indicates that Law No. 76/2002 provides for free training for certain categories of employees (when resuming work after parental leave, after completing military service or after rehabilitation), at their request with the employer's agreement or at the employer's request (Article 66§2). The report does not contain however the information previously requested (Conclusions 2012) on the organisation and implementation of continuing vocational training for employed persons, including relevant figures such as the percentage of employees participating in training, gender balance and public and private expenditure for continuing vocational training. The Committee reiterates these questions and holds that if such information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this issue. It reserves in the meantime its position on this issue.

Guidance and vocational 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 2016), in which it considers that the situation is not in conformity with the Charter on the ground that it has not been established that the right of persons with disabilities to vocational mainstream training

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

Article 9 - Right to vocational guidance

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

The Committee noted previously (Conclusions 2003, 2007, 2008 and 2012) that free and equal access to vocational guidance was guaranteed to all, including nationals of other States Parties to the Charter who are lawfully resident or regularly working in Romania. In response to the Committee's question as to the specific legal basis for the equal treatment guarantee, the report refers to Law No.76/2002 on the unemployment insurance system, as further amended and supplemented, which provides inter alia for career information and counselling services (Articles 57 and 58) and covers inter alia refugees as well as foreign citizens or stateless persons who were employed or earned income in Romania or who have the right to work in Romania, in accordance with the law (Article 16), without discrimination (Article 4, paragraph 1). The Committee asks the next report to clarify whether foreign nationals can have free access to vocational guidance services also within the education system.

As to vocational guidance for persons with disabilities, whether in the education system or on the labour market, the Committee refers to its assessment on this point under Article 15 of the Charter.

Vocational guidance within the education system

The report indicates that the relevant legislation (Methodologies on the organisation and functioning of this local vocational education, approved by OMERYYS No. 3168/03.02.2012 and OMNE No. 3136/20.02.2014) provides that the County School Inspectorate and Bucharest Municipality School Inspectorate (CSI/BMSI) shall inform all lower secondary education schools about further study opportunities in vocational education and training for 8th grade graduates. Furthermore, career guidance and counselling activities are organised for all 8th grade students from lower secondary education, on further study opportunities in 3-year public vocational education and training programmes, with a focus on raising awareness of the labour market requirements and of career and further study opportunities provided by vocational education and training. The career guidance and counselling activities shall be undertaken with the support of school counsellors from the County Resource and Educational Assistance Centre (CREAC) / Bucharest Municipality Resource and Educational Assistance Centre (BMREAC) and have the role of preparing student enrolment in vocational education and training. All lower secondary education schools shall organise information sessions with 8th grade students and their parents, to present the pre-selection and/or admission procedures and the education plan for vocational education and training.

The same legislation provides for the organisation, by schools providing vocational education and training, of "Professions Weeks" in the period dedicated to student counselling and guidance and for the organisation by the CSI/BMSI of "Professions Fair" to present the regional/county offer (including regional education offer), with the involvement of vocational education and training schools and employers.

As regards the information on vocational guidance in the education system, the report refers to a website (www.alegetidrumul.ro) which provides information on the education offer and the number of places available in vocational education and training, at national level. At county level, the County School Inspectorate and Bucharest Municipality School Inspectorate (CSI/BMSI) ensure the visibility of the education offer through the written and audiovisual media and in all public events organised for this purpose. Details on career guidance and counselling activities are furthermore indicated and updated on a yearly basis in the Admission Calendar for vocational education and training.

The Committee had previously noted (Conclusions 2008, 2012) that psycho-pedagogical assistance centres and offices operated in each county, providing counselling, vocational

guidance, career orientation, etc. to students and that the educational and vocational guidance services were performed by specialised teachers and classroom tutors. It had furthermore noted that, in higher education, each university was required to set up a counselling and career guidance centre to assist students with professional and academic counselling. The Committee asks the next report to clarify whether the new legislation has modified this system.

The Committee furthermore recalls that under Article 9 of the Charter, vocational guidance must be provided within the school system (information and counselling on training and access to training) and within the labour market (information and counselling on vocational training and retraining, career planning, etc.):

- free of charge;
- by qualified (counsellors, psychologist and teachers) and sufficient staff;
- to a significant number of persons and by aiming at reaching as many people as possible;
- and with an adequate budget.

The Committee asks that comprehensive and updated information be regularly provided in future reports on Article 9 on how the provision of career guidance is currently organised in educational institutions, the numbers of staff providing it and their qualifications, the number of pupils /students who benefit from it, and the financial resources allocated to it.

Vocational guidance in the labour market

The Committee had previously noted (Conclusions 2008 and 2012) that guidance services were provided through specialised centres forming part of employment offices and private bodies authorised by law.

According to the report, in accordance with the above-mentioned Law No. 76/2002, the National Employment Agency fosters employment opportunities for job seekers mainly by the specialist employment stimulation services, which include career information and counselling services. Under Article 16 of the Law, these services are not only available to job seekers and unemployed persons, but also to workers who intend to change their job. Article 58, paragraph 1, of the same law defines career information and counselling as a set of services provided free of charge with the purpose: to provide information on the labour market and on the evolution of occupations; to provide personality assessment and self-assessment for career guidance purposes; to develop the job seekers' skills and self-confidence, so as to enable them to make career choices and decisions; to provide training on job seeking methods and techniques.

As regards the Committee's request of explanations concerning the fall in the number of beneficiaries of training programmes, the report states that the National Training Plan is elaborated every year by the National Employment Agency in accordance with the legislation in force and taking into account the EU principles and strategic objectives (Europe 2020 Strategy). According to the data presented in the report, the number of people included in training courses during the reference period has continued to decrease, from 48 321 persons in 2011 to 40 265 in 2014.

The Committee furthermore notes that the report does not contain the clarifications requested concerning the number of staff providing labour market guidance services. It notes however from the report on Article 1, paragraph 3, of the Charter that, in 2015 (out of the reference period) the National Employment Agency had 2142 employees, of which 1521 staff working directly with clients. It asks the next report to clarify whether all this staff is involved in the provision of guidance and counselling concerning the choice of a profession or a career change.

In this connection, the Committee refers to the criteria for assessing conformity with Article 9 of the Charter already mentioned above, and asks that the next reports systematically

contain information on how the provision of vocational guidance is ensured in the labour market (what are the relevant bodies, what are their functions, how they are organised, how they operate, what initiatives are taken during the reference period to promote vocational guidance and counselling) as well as updated figures on the expenditure, staffing and the number of beneficiaries of vocational guidance. It also asks for the next report to state what information tools (media, brochures, events, etc.) are implemented in the area of vocational guidance in the labour market. The Committee holds that, if the next report does not provide the information requested on these points, there will be nothing to establish that the situation is in conformity with the Charter.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Romania is in conformity with Article 9 of the Charter.

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.

According to the report, at the end of 2014, there were 737 885 persons with disabilities with disability certificates registered with the Ministry of Labour, Family, Social Protection and the Elderly, including 59 775 aged under 18. The share of persons with disabilities in the total population of Romania is 3.47%.

The Committee notes from the report that 17 202 (2.2%) persons with disabilities live in public care institutions for adults with disabilities. The Council of Europe Commissioner for Human Rights made the same finding following his visit to Romania in 2014. The Committee asks for information in the next report on legal and practical measures taken or planned to limit the placement of children and adults with disabilities in institutions and relevant statistics on persons with disabilities living in residential institutions.

Romania ratified the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol on 31 January 2011. The National Authority for Persons with Disabilities is responsible for overseeing implementation of the Convention.

Definition of disability

The report does not provide new information about the definition of disability. The Committee previously found the situation to be in conformity with the Charter.

Anti-discrimination legislation

The Committee refers to its previous conclusion (Conclusions 2012) for a description of the relevant legislation regulating non-discrimination of persons with disabilities in education in Romania.

In its previous conclusion (Conclusions 2012), the Committee requested information on the measures taken to ensure effective remedies against alleged discrimination in education and training on grounds of disability. In reply, the report presents the relevant case-law covering the issues of education and training.

In its previous conclusion (Conclusions 2012), the Committee requested information as regards the impact of the new provisions in terms of increased mainstreaming of pupils and students with disabilities. In view of the absence of answers, the Committee reiterates its questions.

Education

In its previous conclusion (Conclusions 2012), the Committee requested information on the steps taken to overcome obstacles and ensure that education, in particular in mainstream facilities, was effectively accessible to all. In reply, the report refers to the National Strategy for the Protection and Promotion of Children's Rights 2014-2020 approved by Government Decision 1113/2014, one of the aims of which is the inclusion in mainstream education of children with disabilities and/or with special educational needs. The strategy also develops priority action lines in order to include and keep in education all pupils with special educational needs, including those with disabilities.

The report indicates that a new Education Law (No.1/2011) was passed in 2011, forming the basis for the subsequent legislation for all areas of the education system.

The report describes the compulsory education system: compulsory education comprises 11 grades, with special primary and lower secondary education being compulsory. The age of enrolment in special education may be 2-3 years older than for mainstream education.

Special education covering compulsory education may be organised for pupils with special educational needs who exceed the age for their grade by more than four years and those who are unable to leave their homes on a part-time basis, up to the age of 30.

The report explains that pupils with special educational needs have access to various types of education and may attend mainstream or special schools, depending on their disability. Special and integrated education is organised at all levels of pre-university education, depending on the type and severity of the disability, and provides suitable curricula.

The teachers' council of each school may decide which educational plan to apply, depending on the type and severity of the impairment; some special schools use the mainstream educational plan, either adapted or structured differently (special schools for pupils with sensory disorders).

Special technological high schools, special vocational schools, special high schools and post-secondary classes are organised following the mainstream model. Pupils in special schools can sit the national exams, with special arrangements being made for them (e.g., as regards the organisation of exams).

The report indicates that County School Inspectorates, the Bucharest municipality school inspectorate and local public administration authorities perform censuses for each school area so that all pupils of the appropriate age are enrolled in preparatory grade or first grade. The authorities must organise pre-school, primary and junior secondary education units in the localities where the children live and, where appropriate, must provide transport, accommodation and meals. School enrolment is also monitored by periodic reports to school inspectorates and the Ministry of Education and Scientific Research.

Pupils with special educational needs benefit from specialist services provided by support/travelling teachers in mainstream schools and specific therapies provided by educational psychologists in resource centres. For each pupil with severe disabilities, a personalised intervention plan is adopted, setting out specific objectives for their needs and individual development possibilities. According to the report, pupils who cannot leave their homes because of their disability or who require hospitalisation lasting more than four weeks receive home or hospital schooling.

The Committee notes from the data in the report that there were 1 954 children with disabilities in kindergartens; 25 902 pupils were enrolled in special education (167 special schools); 22 579 pupils with special educational needs were in mainstream schools (1 941 mainstream schools integrating students with disabilities) and 2 007 pupils were in special integrated groups/classes in mainstream education (258 groups). The Committee notes that 24 410 and 23 971 pupils were enrolled respectively in mainstream and special schools in 2009-2010. The report also indicates that many special schools have been converted into centres for inclusive education. The Committee asks what is inclusive education, how many such centres for inclusive education there are in Romania and who attended them.

Despite these efforts, the Committee notes that almost half of pupils with special educational needs attend special schools. It considers therefore that the right of persons with disabilities to mainstream education is not effectively guaranteed. It requests that the next report indicate the steps taken to remedy the situation in practice and provide up-to-date information on developments in respect of mainstreaming.

According to the 2012 figures from the Academic Network of European Disability Experts (ANED), the proportion of young people with disabilities (aged 18-24) leaving school early was 42.6%, compared to 17% for non-disabled young people. The Committee asks the next report to clarify this point, and to provide up-to-date information on the number of young people with disabilities who leave school early.

Vocational training

In its previous conclusion (Conclusions 2012), the Committee asked whether special vocational training existed for children and adults with disabilities and, if so, for the number of people with disabilities attending mainstream or special vocational training. In the absence of a reply, it repeats its question.

Pupils with special educational needs who do not pass the school-leaving examination for compulsory (special or mainstream) schooling may enrol in special vocational schools on a full-time basis and may complete their basic education (nine grades) in parallel on a part-time basis.

The report also indicates that young people with special educational needs may attend special schools to acquire qualifications in line with labour market demands. The schools are adapted to the characteristics of their disability and also provide multiple assistance (health care, social, educational, etc.).

In accordance with the nomenclature of occupations, professions and specialisations, pupils may learn occupations compatible with the type and severity of their disabilities, regardless of the school which they attend (special or mainstream).

In addition, the report indicates that the National Employment Strategy 2014-2020 approved by Government Decision No. 1071/2013 (Official Journal No. 75/2014) aims, among other things, to reduce youth unemployment and the number of young people (aged 15-24) not in employment, education or training. The measures proposed seek to foster the participation of children and young people with special educational and training needs and the labour market integration of young persons with disabilities, including through sheltered workshops. According to DOTCOM data, the Committee notes that the consultation process commenced in 2013 and a final version was submitted for approval, but the process was interrupted in November 2015.

According to the 2012 figures from the Academic Network of European Disability Experts (ANED), the proportion of people with disabilities (aged 30-34) having completed higher education was 15.6%, compared to 24.9% for non-disabled people.

The Committee notes that not all the information requested has been supplied and therefore reiterates its request and, in the meanwhile, concludes that it has not been established that mainstreaming of persons with disabilities is effectively guaranteed in education.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 15§1 of the Charter on the following grounds:

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

Employment of persons with disabilities

The report indicates that at the end of 2014 there were 737 885 persons with disabilities, including 413 399 of working age (18 to 60 years). The Committee notes that the number of persons with disabilities in employment continued to increase slightly, and stood at 30 556 in 2014 as against 27 861 in 2011.

Anti-discrimination legislation

The Committee refers to its previous conclusion (Conclusions 2012) for a description of the relevant legislation regulating non-discrimination of persons with disabilities in employment in Romania.

In its previous conclusion (Conclusions 2012), the Committee asked for information on the measures taken to ensure effective remedies against alleged discrimination in employment on grounds of disability (including examples of relevant case-law and its follow-up), as well as on how reasonable accommodation was implemented in practice; it also asked whether this had prompted an increase in the employment of persons with disabilities in the open labour market. The Committee pointed out that, should the next report fail to provide the requested information, nothing would prove that the situation in Romania was in conformity with Article 15§2 of the Charter. According to the 2014 report on anti-discrimination measures by the European antidiscrimination legal network, Law No. 448/2006 does not provide for penalties in the event of failure to comply with the reasonable accommodation obligation, but explicitly sets out the right to reasonable accommodation of the workplace, both for persons with disabilities seeking employment and for those already in employment. The report presents the relevant case-law on the employment of persons with disabilities and follow-up action taken. The Committee again asks whether the reasonable accommodation obligation has prompted an increase in employment of persons with disabilities in the open labour market.

Measures to encourage the employment of persons with disabilities

In its previous conclusion (Conclusions 2012), the Committee asked about the impact of the National Strategy and other measures to promote the employment of persons with disabilities. In reply, the report states that, from 2012 to 2013, the Directorate for the Protection of Persons with Disabilities held consultations on the implementation of the National Strategy for the protection, integration and social inclusion of persons with disabilities (2006-2013). The report indicates that the national strategy on “A barrier-free society for people with disabilities” for 2016-2020 (outside the reference period) has been drawn up.

The report also states that Law No. 76/2002 includes various measures to promote employment and increase employability, in particular of persons with disabilities:

- employers who hire graduates with disabilities on permanent employment contracts receive a monthly payment for each graduate employed of an amount calculated according to their level of studies, for a period of 18 months (Article 80);
- persons with disabilities aged at least 16 who have successfully completed special schooling but are unable to find employment in line with their training are regarded as unemployed and are entitled to the opportunities available for job-seekers (information and career counselling, job matching, training, assessment

and certification of skills acquired through learning, consultancy and assistance to begin self-employment).

- persons with disabilities may participate free of charge in training programmes for the development of their vocational skills in order to ensure their mobility and reintegration into the labour market. The Committee notes from the report that the number of persons with disabilities who took part in free training programmes fell (from 283 in 2011 to 93 in 2014).

The report also gives details of Law No. 448/2006 on the protection and promotion of the rights of persons with disabilities. The Committee refers to its previous conclusions (Conclusions 2012 and 2008) for a description of this law.

The report refers to the National Employment Strategy 2014-2020 approved by Government Decision 1071/2013 (Official Journal No.75/2014), which seeks, among other things, to achieve full employment and facilitate the labour market integration of persons with disabilities, including through sheltered workshops, by means of various measures included in the implementation plan:

- helping employers to adapt/improve jobs and equipment in line with the needs of persons with disabilities;
- helping employers to create and preserve jobs for persons with disabilities;
- developing employment information and counselling services for persons with disabilities;
- developing assistance services to help persons with disabilities to seek, find and stay in employment, and also to return to work;
- tax incentives to employers to foster labour market inclusion of persons with disabilities;
- vocational reintegration and rehabilitation programmes for persons with disabilities;
- amendment of the legal framework in order to encourage labour market participation of persons with disabilities.

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

In its previous conclusion (Conclusions 2012), the Committee requested information on the steps taken to ensure effective compliance with the reserved quota obligation (under Law No. 448/2006, which 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) and the results achieved. The report does not provide the information requested. The Committee notes from the 2012-2014 report by ANED on the employment of persons with disabilities that the employment rate in the public sector is very low: only one municipality meets the employment quota provided for in the law (*Focșani* – 4%), while some other chief towns of regional municipalities did not employ any persons with disabilities (*Alexandria, Călărași, Piatra, Neamț, Satu Mare, Sfātu Gheorghe*). The Committee asks the next report to clarify this point and provide up-to-date figures on effective compliance with the reserved quotas, how compliance with the requirement is monitored and whether it is planned to take steps to improve the situation. It also requests figures (percentages) on the number of employers who fail to comply and the penalties imposed.

With regard to sheltered employment, the report states that in accordance with Law No. 448/2006 on the protection and promotion of the rights of persons with disabilities, there were 691 “authorised sheltered units” at the end of 2014 (compared with 282 in 2008), where at least 30% of employees were persons with disabilities and which employed 1 790 persons with disabilities in various types of production and service activities (compared with 1 027 in 2008). However, the report does not answer the Committee’s question (Conclusions 2012) regarding the (percentage) rate of transfer from sheltered to ordinary employment. The Committee therefore reiterates the question.

In its previous conclusion (Conclusions 2012), the Committee asked for information on the role of trade unions in sheltered employment. In reply, the report states that trade unions do not target sheltered employment. However, government measures aim at encouraging stronger involvement of economic and social players in the management of employment issues and in building an inclusive labour market.

The Committee notes that the low employment rate of persons with disabilities (according to the report, 14.69% of total adults with disabilities aged 18 to 60 years in 2014) shows that the measures to encourage their employment are inadequate.

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 the open labour market.

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

Paragraph 3 - Liberalising regulations

The Committee recalls that Romania has not ratified paragraphs 1 and 2 of Article 18 and takes note of the information contained in the report.

It notes that the process of legal harmonisation with EU legislation involved successive amendments of the national legislation and led to the adoption of new legislation replacing the old regulations on the employment and secondment of foreigners on the territory of Romania, namely Government Ordinance (GO) no. 56/2007. Government Ordinance (GO) 25/2014 is the current legal framework on the employment and secondment of foreigners on the territory of Romania.

Access to the national labour market

The report indicates that depending on the type of activity intended to carry out in Romania, a foreigner may be employed as:

- Permanent worker – the foreigner employed on the territory of Romania under an individual permanent or fixed-term employment contract, concluded with an employer based on the employment permit;
- Intern – the foreigner employed on the territory of Romania based on the employment permit, for a fixed-term internship in order to obtain a qualification or to improve his/her training and linguistic and cultural knowledge;
- Seasonal worker – the foreigner employed on the territory of Romania in a sector where activities are carried out depending on seasons, under an individual fixed-term employment contract which may not exceed 6 months in an interval of 12 months, concluded with an employer based on the employment permit;
- Cross-border worker – the foreigner, citizen of a state bordering Romania who lives in the border area of that state, employed in a border locality on the territory of Romania, under an individual permanent or fixed-term employment contract, concluded with an employer based on the employment permit;
- Highly qualified worker – the foreigner employed on the territory of Romania for a highly qualified job, under an individual permanent employment contract or under an individual fixed-term employment contract of at least 1-year duration, concluded with an employer based on the employment permit;
- Seconded worker – the skilled foreigner, employed by a legal entity having its registered headquarters abroad, who may carry out a professional activity in Romania in a series of situations.

In order to enter the territory of Romania as an employee, a work authorisation and a long stay visa is needed. The future employer needs to apply to the General Inspectorate for Immigration on behalf of the employee for a work authorisation, to be issued within the quotas fixed by the Government.

After having entered the territory of Romania, the foreigner must obtain a sole permit. The documents shall be lodged by the foreigner in person with the territorial units of the General Inspectorate for Immigration in his/her county of residence, at least 30 days prior the expiry of the right to stay granted by the visa.

The sole permit shall be renewed at least 30 days prior the expiry of the previous permit.

A self-employed worker wishing to carry out independent activities in Romania does not need a work authorisation but must apply for a residence permit.

The Committee notes that the regulation GO no. 25/2014 introduced a single application procedure leading to the issuance of a sole administrative document to the foreigner by the General Inspectorate for Immigration, which includes both the residence permit and the work

permit. It considers that formalities for the granting of temporary residence permits have been simplified and there is one single procedure for issuing work and residence permits.

With regard to the Committee's question related to the conditions employers should respect to fill a vacancy, by a foreign citizen, the report indicates that those conditions are as follows:

- vacancies cannot be filled by Romanian citizens, citizens of European Economic Area, or by permanent residents of Romania;
- future employee fulfills special conditions regarding professional qualifications, experience, required by the employer pursuant to legal provisions;
- future employee is medically able to carry out the activity and has not been convicted for crimes which are incompatible with the activity to be carried out on the territory of Romania;
- the yearly quota approved by Government Decision is respected;
- the employer has paid its contribution to the state budget;
- the employer carries out the activity for which the issuance of the work authorisation is requested;
- the employer has not been sanctioned for undeclared work or for illegal employment.

With regard to the information requested by the Committee on the number of applications/work permits, the report indicates statistical data on the number of employment and secondment for the period of 2011 – 2014, by year: they vary from 11,307 permits in 2011 to 9,734 permits in 2014, without specifying if they refer to non EEA States Parties nationals. The Committee recalls that its assessment of the degree of liberality used in applying existing regulations is based on figures showing the refusal rates for work permits. A high percentage of successful applications by nationals of States Parties to the Charter for work permits and for renewal of work permits and a low percentage of refusals has been regarded as a clear sign that existing regulations are being applied in a spirit of liberality. In this respect, the Committee notes that the OECD 2015 publication on recent development in migration movements indicates an increase in the number of non EU nationals employed in Romania in 2013. More precisely in 2013, over 21,000 migrants were employed in Romania. They were mainly nationals from Turkey, Moldova and Italy. The Committee asks for the next report to contain information on the number of refused work permits to non EEA nationals concerning a first application and renewals.

With regard to fees to obtain the employment permit, the employer shall pay 200 euros for the employment permit for a permanent, transferred, cross-border, intern employee; and 50 euros for the employment permit for a seasonal worker. The Committee asks if there is any fee to be paid for the work permit by the employee or the self-employed.

With regard to measures adopted to liberalise regulations governing the recognition of foreign certificates, professional qualifications and diplomas, the report indicates that the National Centre for Recognition and Equivalence of Diplomas – CNRED, an institution subordinated to the Ministry of Education and Scientific Research, is the competent authority for the recognition of qualifications acquired abroad. Pursuant to Law no. 200/2004 on the recognition of diplomas and professional qualifications for regulated professions in Romania, CNRED issues certificates of compliance of studies, necessary for the recognition of professional qualifications in the Member States. For the regulated professions mentioned by Law no. 200/2004, as further amended and supplemented, such a certificate is issued by the relevant competent authorities. The Committee asks for information on the number of recognition of foreign certificates, professional qualifications and diplomas issued to non EEA nationals during the reference period.

Exercise of the right of employment/Consequences of the loss of employment

In its last conclusion, the Committee considered that the situation was not in conformity with the Charter as the loss of employment led to the cancellation of residence permit thus

obliging the foreign worker to leave the country. In this regard, the new amendment to GO no. 194/2002, article 56 paragraph 9, stipulates that if the employment relationship of the foreigner is terminated before the expiry of the period for which the sole permit or the Blue Card of the EU was issued, these permits remain valid until their validity period expires, but no longer than the period for which the foreigner benefits of unemployment allowance, or no longer than 60 days after registration of the termination of the employment relationship, if the foreigner does not benefit from unemployment allowance. Thus, the legislation invoked above allows the foreigner the possibility to find a new job with another employer and, implicitly, to obtain the right to stay, without the need to leave the Romanian territory. The deadline of 60 days after registration of the termination of the employment relationship considers the necessary time for the new employer to obtain the employment permit (30 days) plus the deadline for the issuance of the stay permit (30 days).

Also, Article 17 of the same regulation expressly regulates the possibility for the foreigner to take a new job, stipulating that an employee, except seasonal workers, may start a new job with the same employer or with another employer, anytime during the validity period of the sole permit.

The Committee considers that the situation in Romania is in conformity with Article 18§3 of the Charter on the ground that the loss of employment does not lead to the cancellation of the residence permit.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Romania is in conformity with Article 18§3 of the Charter.

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

The Committee notes that the situation which it has previously considered to be in conformity with the Charter has not changed.

Conclusion

The Committee concludes that the situation in Romania is in conformity with Article 18§4 of the Charter.

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.

Equal rights

The Committee has examined the legal framework guaranteeing equal rights between men and women in its previous conclusions (Conclusions 2008, 2006).

The report indicates that Section 5 of the Labour Code (Law No. 53/2003 republished in the Official Journal No. 345 of 18 May 2011) guarantees the principle of equal treatment for all employees and “any direct and indirect discrimination against an employee based on gender, sexual orientation, genetic characteristics, age national affiliation, race, colour, ethnicity, religion, political opinion, social origin, disability, family situation or responsibility, trade union affiliation or activity shall be prohibited.”

Under Section 6(3) of the Labour Code, any gender-based discrimination shall be prohibited for equal work or work of equal value. The same principle is enshrined by Section 7 (1) of the Law No. 202/2002 on Equal Opportunities between Women and Men (Gender Equality Law) which guarantees equality of opportunities and treatment between women and men in all aspects and phases of the employment relationship, including equal pay for work of equal value.

With regard to enforcement, the report indicates that from 9 notifications alleging direct or indirect discrimination submitted in 2013 to the Labour Inspection and to the National Council for Combating Discrimination, only 3 related to a breach of the legal provisions on gender equality. The Committee asks whether the courts have dealt with such cases. The Committee asks the next report to provide information on the cases of gender discrimination dealt with by the Labour Inspection, NCCD and the courts, with specific indications on their nature, outcomes, sanctions applied against the employers and compensations granted to victims.

The Committee previously sought information on pay comparisons, namely whether domestic law makes provision for comparisons of pay and jobs to extend outside the company directly concerned where this is necessary for an appropriate comparison (Conclusions 2008 and 2012 on Article 20; Conclusions 2014 on Article 4§3). It noted in its Conclusion 2014 on Article 4§3 that the normative acts establish a unitary pay system for the public sector, while in the private sector, salary rights and other rights are covered by individual employment contracts and/ or collective labour agreements concluded at the unit level. It also noted that there were no levers for data collection to enable comparison of wages within a company or between wages and jobs outside the company (Conclusions 2014, Article 4§3).

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”). Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful, this comparison can only be made across companies/undertakings. Therefore, the Committee requires that it be possible to make pay comparisons across companies. It notes that at the very least, legislation should require pay comparisons across companies in one or more of the following situations:

- cases in which statutory rules apply to the working and pay conditions in more than one company;
- cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;

- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding (company) or conglomerate (Conclusions 2012, Statement of Interpretation on Article 20).

The Committee recalls that in equal pay litigation cases the legislation should allow pay comparisons across companies only where the differences in pay can be attributed to a single source. For example, the Committee has considered that the situation complied with this principle when in equal pay cases comparison can be made with a typical worker (someone in a comparable job) in another company, provided the differences in pay can be attributed to a single source (Conclusions 2012, Netherlands, Article 20) or when pay comparison is possible for employees working in a unit composed of persons who are in legally different situations if the remuneration is fixed by a collective agreement applicable to all entities of the unit (Conclusions 2014, France, Article 4§3).

Considering the above mentioned, the Committee reiterates its question whether it is possible in equal pay litigation cases to make comparisons of pay between several companies which are in one of the situations described above.

Equal opportunities

According to the report, in 2013 women accounted for 70.1% of the unpaid family workers, 44% of the employed workers and 29.2% of the self-employed workers. Data show that the activities dominated by women were in the fields of health care and social assistance (80.5%), education (75.5%), financial brokerage (65.7%), hotels and restaurants (60.9%). The report adds that in 2012 women earned on average 9.9% less than men.

The Committee notes that, according to Eurostat statistics, the unadjusted pay gap during the reference period stood at 11% in 2011; 9.7% in 2012; 9.1% in 2013 and 10.1% in 2014 which was below the than the EU 28 average (16.1% in 2014). The Committee asks for updated information in the next report on the position of women in employment including the wage gap, and measures taken to address the gender pay – gap.

The Committee takes note of the information regarding the inspections performed during the reference period by the Labour Inspectorate on the implementation of the Gender Equality Law. It notes that from a total number of sanctions applied of 9,261, only 20 fines (in the amount of 34,500 RON or Eur 7,759) were imposed and 9,241 warnings. The report indicates that the labour inspections concerning gender equality are in general focused on prevention. The Committee asks that the next report provide information on training and awareness raising for labour inspectors, judges, workers, employers and their organizations regarding the principle of equal remuneration for men and women for work of equal value. The Committee also asks information on any complaints regarding discrimination in remuneration dealt with by the courts and any cases detected by or reported to labour inspectors, including on their outcomes.

The report indicates that in April 2014 the Department for Equality of Opportunities between Women and Men (DEOWM) was established. The DEOWM is subordinated to the Ministry of Labour, Family, Social Protection and Elderly and has, inter alia, the following duties: the analysis and review of the current legal framework in the field of gender equality and harmonization/ensuring compliance with the European and international standards; to develop the policies of the Government in the field of equality between women and men and coordinate their implementation; to monitor the enforcement of the Gender Equality Law and its implementation.

The report indicates that a National Strategy for Equality of Opportunities between Women and Men for 2014-2017 was adopted, which seek to: promote the gender perspective in employment, mobility and workforce migration policies; increase awareness of labour inspectors on the legal framework on gender equality; increase awareness of the wage differences between women and men. The Committee asks the next report to provide

information on the implementation and results of the National Strategy with regard to gender equality in employment.

The report further provides information on the measures to promote gender equality taken during the reference period such as projects, round tables and campaigns on empowering Roma women in the labour market, reducing the gender pay gap and awareness raising campaigns and promotion of gender equality for mass media, central and local public authorities, employers, organisations of the civil society, social partners, citizens.

The Committee asks the next report to provide comprehensive information on all measures taken to eliminate *de facto* inequalities between men and women, including positive actions/ measures taken. It asks in particular information on their implementation and impact on combating occupational sex segregation in employment, increase women's participation in a wider range of jobs and occupations, including decision-making positions, and to reduce the gender pay gap.

Conclusion

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

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 understands that there have been no changes to the situation which it has previously (Conclusions 2007 and 2003) considered to be in conformity with the Charter. It asks for the next report to provide a full and up-to-date description of the situation.

Obligation to provide valid reasons for termination of employment

The Committee notes that pursuant the provisions of Law no.53/2003, Labour Code, dismissal on the initiative of the employer may be decided for reasons pertaining to the person of the employee (Article 61 letters a-d) and for reasons not pertaining to the employee (Article 65 paragraph1).

In connection with its question whether the courts, in case of dismissal on the ground of redundancy or other economic reason, have the competence to review the case on its merits and not only on points of law, the Committee notes that the competent court – which is the tribunal having jurisdiction in the area of domicile or residence of the dismissed employee – may decide, having analyzed the case, whether the dismissal was ungrounded or illegal. In this regard the Committee reiterates its question for examples of the domestic case law.

The Committee recalls that according to the Appendix to the Charter, for the purposes of Article 24 the term ‘termination of employment’ means termination of employment at the initiative of the employer. Therefore, situations where a mandatory retirement age is set by statute, as a consequence of which the employment relationship automatically ceases by operation of law, do not fall within the scope of this provision.

The Committee further recalls that under Article 24 dismissal of the employee at the initiative of the employer on the ground that the former has reached pensionable age will be contrary to the Charter, unless the termination is justified by one of the valid grounds expressly established by the provisions of the Charter .

In reply to its question on how the legislation complies with this approach, the Committee notes from the report that the termination of the individual employment contract on the date when the standard age and the minimum contributions are cumulatively fulfilled is not initiated by the employer and is not dismissal in the meaning provided by the Labour Code.

Prohibited dismissals

The Committee notes that dismissal of employee based on discriminatory grounds is prohibited and that the exercise of strike and of trade union rights, pursuant to law, may not constitute reason for dismissal. This shall not be considered a breach of the employee’s obligations and may not be followed by the employees who participate in or organised the strike. In order to protect the employee against abusive dismissal, for this dismissal situation the Labour Code provides for a mandatory measure the employer should take prior to the dismissal decision, namely prior investigation.

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, as pursuant to law. In reply to its question whether a time limit was placed on protection against dismissal in such cases, the Committee notes from the report that there is no statute of limitations for these provisions.

Remedies and sanctions

The Committee notes that if the employer does not observe the procedure provided by law for dismissal or if the reason for dismissal is not grounded or legal, the dismissed employee

may go to the competent court to have it annulled. The court, in case the employee's case is grounded, shall annul the dismissal and oblige the employer to compensate the employee with an amount equal to the indexed, increased and updated salaries and all other rights he/she would have benefited if not dismissed. "Subjective" dismissals are greatly limited and there is a specific sanction, absolute nullity, for dismissal not compliant with legal provisions or grounded.

The Committee understands that, in case of absolute nullity, the employee is reinstated and asks if its understanding is correct.

In reply to its question whether the compensation in the event of unlawful dismissal was subject to a ceiling, the Committee notes that national legislation does not provide for a maximum amount payable to the employee, on which the court may decide, and that the employer has the obligation to pay such compensation starting from dismissal date until the date of the judicial decision.

Conclusion

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

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

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

In its previous conclusion (conclusions 2012) the Committee asked whether workers' claims will be satisfied in situations where the employer's assets are recognised as insufficient to justify the opening of formal insolvency proceedings, through the Guarantee Fund and what would be the amount of claims satisfied.

The report indicates that the regulations governing in Romanian legislation the protection of employees' claims in the event of employer insolvency, are: Law No. 85/2006 on insolvency proceedings and Law No. 200/2006 on the setting up and use of the Guarantee Fund for the payment of employees' claims; in accordance with Section 3 of Law No. 85/2006, insolvency is defined as "a situation in which the debtor has insufficient assets to be able to clear their debts". Private legal persons subject to insolvency proceedings entitled to act on behalf of the insolvent employer may be subject to general or simplified proceedings. Simplified proceedings apply when private persons do not own any assets, or when the administrator or constitutive actor cannot be found or does not meet the conditions for the simplified procedure.

The report indicates that employees whose financial claims remain unsettled can apply to the Guarantee Fund for their payment, within the limits laid down in Law No. 200/2006.

The report indicates that the categories of employees' claims to be paid from the Fund's resources include:

- residual wages;
- holiday payments, but only those due for the last year of employment;
- outstanding payments in the amount specified in the collective agreement and/or individual employment contract in the event of termination of employment;
- outstanding payments under the collective agreement and/ or individual employment contracts related to work accidents or occupational diseases;
- outstanding payments that employers are obliged to pay employees during temporary interruptions of work.

The report indicates that the total amount of outstanding claims to be covered by the guarantee fund may not exceed, according to Section 14 para. 1 of the Law, the equivalent of three times the gross nationwide average wage for each employee. Except for compensation for outstanding annual leave owed to employees, all other wage claims must refer to a period not longer than three calendar months preceding the filing of the claim, prior to or after the opening of insolvency proceedings. With regard to claims related to annual holiday payments, employers are liable to pay amounts for up to 12 months prior to the opening of insolvency proceedings. Determination of the amounts and the payment of outstanding claims are carried out by county agencies: at the written request of the administrator or liquidator of the insolvent employer; or at the written request of the relevant employees or legally constituted organizations representing their interests. Applications shall be settled within 45 days of the date of registration with the competent territorial agency. In accordance with the law, before filing a claim with a territorial agency, the employees or their legal representatives must notify, in writing, the administrator or liquidator to enable the latter to take the necessary steps to pay the employees' claims. A copy of this notification is attached to the request made to the territorial employment agency.

In its previous conclusion (conclusions 2008 and 2012) the Committee also asked for an estimate of the percentage of employees' claims that are satisfied under the guarantee system and the normal or average time that elapses between the filing of the claim and the payment of any sums owed. The report indicates that all employees' claims shall be satisfied

within the guarantee system, and the amounts due are fully paid. The minimum period between filing the claim and payment of amount dues is of approximately 1 month.

The Committee recalls that in order to demonstrate the adequacy in practice of the protection, States must provide information, inter alia, on the average duration of the period from 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 the privilege system. In light of the information included in the report, which refers only to the minimum period between filing the claim and payment of amount dues (approximately 1 month), the Committee asks to provide additional information on the average duration of the period from 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 the privilege system.

Since the report does not provide complete information, pending receipt of the information requested, the Committee defers its conclusion on this point. It draws the attention of the Romania's authorities to the fact that unless this information is contained in the next report, it will lack the requisite information to establish whether the situation in Romania is in conformity with Article 25 of the Charter.

Conclusion

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