January 2014

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2013

(ROMANIA)

Articles 3, 11, 12 and 13
of the Revised Charter

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 and the Committee as well as statements of interpretation and general questions formulated by the Committee appear in the General Introduction to the Conclusions.[1]

The European Social Charter (revised) was ratified by Romania on 7 May 1999. The time limit for submitting the 12th report on the application of this treaty to the Council of Europe was 31 October 2012 and Romania submitted it on 13 March 2013. On 7 June 2013, a letter was addressed to the Government requesting supplementary information regarding Article 13§2. The Government submitted its reply on 19 June 2013. Comments on the report from Romanian ACCEPT, Transgender Europe, and ILGA-Europe were registered on 11 April 2013.

This report concerned the accepted provisions of the following articles belonging to 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).

Romania has accepted Articles 3, 11, 12 and 13 from this group.

The reference period was 1 January 2008 to 31 December 2011.

The present chapter on Romania concerns 13 situations and contains:

– 3 conclusions of conformity: Articles 3§1, 11§3 and 13§2.

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

In respect of the other 2 situations concerning Articles 12§2 and 12§3 the Committee needs further information in order to assess the situation. The Committee consequently asks the Government to comply with its obligation to provide this information in its next report on the articles in question.

The next report from Romania deals with the accepted provisions of the following articles belonging to the thematic group "Labour rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),

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

The deadline for the report was 31 October 2013.

[1] *The conclusions as well as state reports can be consulted on the Council of Europe's Internet site (www.coe.int/socialcharter).*

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Safety and health regulations

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

General objective of the policy

The Committee previously examined (Conclusions 2003, 2007 and 2009) the legal framework and the general objective of the occupational health and safety policy.

The report recalls that in accordance with Act No. 319/2006 of 14 July 2006 on safety and health at the workplace, the Ministry of Labour, Family and Social Protection has competence to co-ordinate the occupational health and safety policy. The Plan for Research and Development for 2009-2012, approved by the Minister of Labour, Family and Social Protection Order No. 668/2008 includes an item on developing safety and health measures on working conditions, safe machinery and protective equipment. Research output is intended to benefit the Ministry, social partners, undertakings, and public and private institutions with competencies in social matters. Under the supervision of the Ministry of Labour, Family and Social Protection, the State Labour Inspectorate (SLI) develops annual framework programmes of action (PCAs), aimed at targeting inspection visits at specific sectors with high risk exposure and increased accident rates; supporting actions to improve prevention and protection in small and medium-sized enterprises; providing tools for risk assessment and surveillance; promoting best practices and developing awareness; integrating occupational health and safety into secondary and higher education programmes and vocational training. Territorial labour inspectorates complement the PCAs with territorial programmes of action.

According to the report, both the Plan and the PCAs take account of the European Strategy 2007-2012 on Safety and Health at Work,[1] campaigns co-ordinated by the European Agency for Safety and Health at work, the Senior Labour Inspectors' Committee (SLIC). According to another source,[2] Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, which incorporates ILO Convention No. 155 on Occupational Safety and Health (1981), is transposed into national law.

The Committee takes note of this information. It notes the existence of a legislative framework, which provides for an overall approach to occupational health and safety policy, and of a policy whose aim is to pursue and preserve a culture of prevention as regards occupational safety and health. It asks for information in the next report on results obtained by the Plan for Research and Development for 2009-2012 and the way in which the policy is regularly reviewed in the light of changing risks.

Organisation of occupational risk prevention

The Committee previously examined (Conclusions 2003, 2007 and 2009) the organisation of occupational risk prevention.

The report states that, on the basis of discussions between inspectors and employers and workers at inspection visits, questionnaires to seminar participants, needs expressed by employers at regular meetings with territorial labour inspectorates, the SLI determines its information and guidance policy for employers and workers. On www.inspectmun.ro, the SLI provides general information on applicable legislation; current PCAs and projects; guides to risk assessment; guidelines on specific risks; good practices; and statistic data. Regular meetings with employers' and workers' representatives at territorial labour inspectorates complement this information and provide advice as well as case analysis.

The report also states that PCAs take into account results from labour inspection visits and data on occupational accidents and diseases, which the SLI analyses in co-operation with the National Research and Development Institute for Labour Protection, the National Centre for Community Environment Risk Monitoring at the Bucharest Public Health Institute, and the National Institute of Statistics.

The Committee takes note of this information. It notes the existence, at national and territorial level, of measures for the prevention of occupational risks suited to the nature of the risks, together with measures of information and training for workers. It also notes that the SLI and territorial labour inspectorates participate in developing an occupational health and safety culture among employers and employees and in sharing knowledge of occupational hazards and prevention acquired during inspection activities. It asks for information in the next report on how employers, particularly small and medium-sized enterprises, discharge their obligations to assess work-related risks and adopt preventive measures geared to the nature of risks in practice, and on whether these obligations are enforced in practice.

Improvement of occupational safety and health

The Committee previously examined (Conclusions 2003, 2007 and 2009) the improvement of occupational health and safety. It concluded that the situation was not in conformity with the Charter on the ground that it was not established that the occupational health and safety policy included training, information, quality assurance and research in a satisfactory manner (Conclusions 2009).

The report states that Government Ordinance No. 1425/2006 approving methodological standards to implement Act No. 319/2006 specifies standards for the occupational health and safety training required for workers' representatives in charge of prevention and protection activities and employers in charge of such activities in undertakings with up to nine employees. These persons must complete training on the legal framework; basic concepts; general risks; specific risks in the undertaking; and first aid. More advanced training courses include criteria for risk assessment, organisation of prevention and protection; emergency and evacuation management; and reporting. Occupational health and safety training programmes and courses are provided by educational institutions licensed under Government Ordinance No. 129/2000 on Adult Vocational Training. Training documents, technical information and external prevention and protection services are approved and licensed by the territorial labour inspectorates.

The report also states that in according with the PCAs, the SLI organises seminars, workshops and conferences; disseminates information materials and publications; and conducts media campaigns on occupational health and safety issues. The National Institute of Public Health conducts research on occupational disease prevention and surveillance; health monitoring, promotion and education; occupational health assessment; and public health management. According to another official source,[3] in line with Government Ordinance No. 1772/2004, the National Research and Development Institute for Labour Protection, in co-ordination with the Ministry of Labour, Family and Social Protection, provides research on risk prevention and protection; technical guidelines and safety schemes; laboratory services for physical, biological and chemical impact studies; advanced training on safety management and safety audit; certification schemes. The Institute supports occupational health and safety policy through its fundamental research, applied research, methodological instruments, technical assistance, consulting and training activities.

The statement by the Representative of the Government in the Governmental Committee[4] confirms the information provided in the report and provides some more details.

The Committee takes note of this information. It notes the existence of a system aimed at improving occupational health and safety through scientific and applied research, development and training, in which public authorities are involved.

Consultation with employers' and workers' organisations

The Committee previously examined (Conclusions 2003, 2007 and 2009) the consultation of employers' and employees' organisations in the design and implementation of the occupational health and safety policy.

The report states that forums and institutions for the consultation of employers' and workers' organisation have been reframed during the reference period by Act No. 62/2011 of 10 May 2011 on social dialogue. In accordance with Sections 82 et seq. of Act No. 62/2011, the tripartite Economic and Social Council has consultative functions in drafting legislation and regulations. In accordance with Sections 120 et seq. of Act No. 62/2011, the Commission for Social Dialogue in the Ministry of Labour, Family and Social Protection, a tripartite forum for debate between employers' and workers' representatives and the public administration, has an advisory role in drafting legislation and regulations coming under the Ministry's competence. Each Prefectorate replicates the Commission for Social Dialogue to ensure tripartite consultations at territorial level. Exposure limit values on hazardous chemical agents are determined and amended by the Committee on Occupational Safety and Health, established in accordance with Minister of Health and Minister of Labour, Family and Social Protection Joint Order No. 1297/2011.

The report also states that the SLI involves the social partners through co-operation agreements and participation of their representatives in seminars, workshops, and round tables. Results of the research conducted *inter alia* on occupational health and safety under the Plan for Research and Development for 2009-2012 are made available to employers' and workers' organisations.

The Committee takes note of this information. It notes that a system for consulting employers' and workers' organisations, conductive to fostering social dialogue, exists at the level of national and territorial authorities. It asks for information in the next report on the consultation of bodies with responsibility for occupational health and safety issues at company level.

Conclusion

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

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[1] *Improving quality and productivity at work: Community Strategy 2007-2012 on health and safety at work, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Doc. COM(2007)62final, 21 February 2007.*
[2] *http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:71989L0391:FR:NOT#FIELD_RO*
[3] *http://www.inpm.ro/index.php?language=en#contact*
[4] *Governmental Committee, Report on Conclusions 2009, T-SG(2011)1 final, pp. 10-13.*

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

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

Risks covered by the regulations

The Committee previously examined (Conclusions 2003, 2007 and 2009) the extent of the risks covered specifically by legislation and regulations on occupational health and safety. It concluded that the situation was in conformity with the Charter (Conclusions 2009).

The report describes the current legislative framework and provides a list of regulations which transpose the Community *acquis* on specific risk coverage, including regulations such as Government Ordinance No. 510/2010 on minimum occupational safety and health requirements regarding the exposure at work to risks generated by artificial optical radiation, transposing Directive 2006/25/EC of the European Parliament and of the Council of 5 April 2006 on the minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents (artificial optical radiation); Minister of Health and Minister of Labour, Family and Social Protection Joint Order No. 1297/2011 establishing the Commission on Occupational Health and Safety for hazardous chemical agents, transposing Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work; and Government Ordinance No. 1/2012 amending and supplementing Government Ordinance No. 1218/2006 and 1093/2006, supplementing the transposition of Commission Directive 2009/161/EU of 17 December 2009 establishing a third list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC and amending Commission Directive 2000/39/EC.

According to another source,[1] during the reference period, Government Ordinance No. 601/2007 amending and supplementing normative acts in matters of occupational safety and health supplemented the transposition of Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites; of Council Directive 98/24/EC quoted above; of Directive 2002/44/EC of the European Parliament and of the Council of 25 June 2002 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration); and of Directive 2003/10/EC of the European Parliament and of the Council of 6 February 2003 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise). Moreover, several Government Ordinances transposed Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003 amending Council Directive 96/82/EEC of 9 December 1996 on the control of major-accident hazards involving dangerous substances; Government Ordinance No. 517/2011 amending and supplementing Government Ordinance No. 1029/2008 transposed Directive 2009/127/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2006/42/EC with regard to machinery for pesticide application; Government Ordinance No. 1756/2007 on limitations of noise emission levels generated by equipment for use outdoors transposed Directive 2005/88/EC of the European Parliament and of the Council of 14 December 2005 amending Directive 2000/14/EC of the European Parliament and of the Council of 8 May 2000 on the approximation of the laws of the Member States relating to the noise emission in the environment by equipment for use outdoors; and Emergency Ordinance No. 126/2011 on transportable pressure equipment transposed Directive 2010/35/EU of the European Parliament and of the Council of 16 June 2010 on transportable pressure equipment.

The Committee takes note of this information. It notes that even though, according to another source,[2] Romania has ratified few relevant ILO Conventions, most of the Community *acquis* on specific risk coverage has been transposed to domestic law. The Committee considers therefore that the current legislation and regulations meet the general obligation under Article 3§2 of the Charter, which requires that most of the risks listed in the General Introduction to Conclusions XIV-2 (pp. 37-38) be specifically covered, in line with the level set by international reference standards.

Levels of prevention and protection

The Committee examines the levels of prevention and protection provided for by the legislation and the regulations in relation to certain risks.

Establishment, alteration and upkeep of workplaces

The report provides no specific information on the installation, modification and upkeep of workplaces. According to another source,[3] ILO Conventions No. 119 on Guarding of Machinery (1963) and No. 120 on Hygiene in Commerce and Offices (1964) have not been ratified, whereas ILO Convention No. 127 on Maximum Weight (1967) is in force. The Committee previously noted (Conclusions 2009) that most of the Community *acquis* on the guarding of machinery, the use of display screen equipment or noise had been incorporated into domestic law. According to another source,[4] during the reference period, Directive 2006/42/CE of the European Parliament and of the Council of 17 May 2006 on machinery was transposed by Government Ordinance No. 1029/2008 providing conditions to introduce machine protection and Government Ordinance No. 294/2008 amending and supplementing Government Ordinance No. 439/2003.

In light of this information, the Committee considers that levels of prevention and protection in relation to the establishment, alteration and upkeep of workplaces comply with the requirements under Article 3§2 of the Charter. Recalling that the report must provide full, up-to-date information on changes in the legislation and regulations during the reference period, it asks for information in the next report on the transposition of Directive 2009/104/EC of the European Parliament and of the Council of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work. It also asks for details on any requirement for employers to take follow-up measures upon workplace risk assessment and any deadlines for compliance.

Protection against hazardous substances and agents

The Committee previously examined (Conclusions 2003, 2007 and 2009) the levels of prevention and protection against asbestos and ionising radiation. It asked for information on any steps taken to ban the placing on the market and use of asbestos as requested by Commission Directive 1999/77/EC of 26 July 1999 adapting to technical progress for the sixth time Annex I to Council Directive 76/769/EEC (asbestos); measures taken to establish an inventory of all buildings and materials contaminated by asbestos; plans to transpose Council Directive 96/29/EURATOM of 13 May 1996 laying down basic safety standards for the protection of the health of the workers and the general public against the dangers arising from ionising radiation; and whether limit values set out in Act No. 319/2006 of 14 July 2006 on safety and health at the workplace correspond to those recommended by the International Commission on Radiological Protection (ICRP).

The report states that Directive 1999/77/EC has been incorporated into domestic law by Government Ordinance No. 124/2003 on the prevention, reduction and control of environmental pollution by asbestos, which prohibits marketing and use of asbestos and products containing asbestos as of 1st January 2007. According to another source,[5] the transposition of Directive 2003/18/EC of the European Parliament and of the Council of 27 March 2003 amending Council Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work was supplemented by Government Ordinance No. 601/2007 amending and supplementing normative acts in matters of occupational safety and health, and Directive 2009/148/EC of the European Parliament and of the Council of 20 November 2009 on the protection of workers from the risks related to exposure to asbestos at work was transposed by Government Ordinance No. 1875/2005 relating to safety and health protection of workers from risks arising from exposure to asbestos.

The Committee takes note of this information. It asks that the next report provide information on any measures adopted to incorporate the exposure limit of 0.1 fibres per cm^3 introduced by Directive 2009/148/EC, as well as on the Government's intentions concerning the ratification of ILO Convention No. 162 on Asbestos (1986).

The report provides no information in reply to the questions relating to the levels of protection against ionising radiation. According to another source,[6] Directive 96/29/EURATOM has been transposed by President of the National Committee for the Control of Nuclear Activities Order No. 14/2000 approving fundamental radiologic safety standards; Minister of Health and Family Order No. 944/2001 approving standards for the medical supervision of persons exposed to ionising radiation at work; and Minister of Health and Family Order No. 1032/2003 approving and supplementing standards for the medical supervision of persons exposed to ionising radiation at work. Moreover, Council Directive 2006/117/EURATOM of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel has been transposed by President of the National Committee for the Control of Nuclear Activities Order No. 443/2008 approving standards for the supervision and control of international shipment of radioactive waste and used nuclear combustibles involving Romanian territory.

In light of this information, and given that Directive 96/29/EURATOM incorporates the standards set out in ICRP Recommendation (1990),[7] the Committee concludes that the levels of prevention and protection against ionising radiation are at least equivalent to those laid down in the benchmark international standards, in conformity with Article 3§2 of the Charter. Recalling that the report must provide full, up-to-date information on changes in the legislation and regulations during the reference period, it asks for information in the next report on the Government's intentions concerning the ratification of ILO Convention No. 115 on Radiation Protection (1960).

Personal scope of the regulations

The Committee examines the personal scope of legislation and regulations with regard to workers in insecure employment.

Temporary workers

The Committee previously examined (Conclusions 2003, 2007 and 2009) the protection of temporary workers, interim workers and workers on fixed-term contracts. It noted that the information and training obligations provided by Act No. 90/1996 on labour protection, Government Ordinance No. 557/2007 supplementing measures to promote improvement of safety and health at the workplace for employees employed on fixed-term contracts and for

employees employed by temporary employment agencies and Government Ordinance No. 355/2007 on the supervision of workers' health covers employees irrespective of their contract status, and concluded that the situation was in conformity with the Charter in this respect (Conclusions 2007 and 2009). It asked for confirmation that provisions on medical supervision in the workplace include temporary workers (Conclusions 2009).

In reply to the Committee's question, the report states that the State Labour Inspectorate (SLI) controls whether interim workers enjoy access to medical supervision in accordance with Government Ordinance No. 557/2007, and that this Government Ordinance transposes Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship. According to another source,[8] the incorporation of this Council Directive was supplemented by Act No. 53/2003 of 2003 to introduce the Labour Code; Emergency Ordinance No. 65/2005 amending and supplementing Act No. 53/2003; Act No. 371/2005 of 2005 approving Emergency Ordinance No. 65/2005; and Government Ordinance No. 938/2004 establishing and organising licensing procedures for temporary work agencies.

The report also states that under Act No. 52/2011 of 15 April 2011 relating to the exercise of certain occasional activities by seasonal workers, day workers employed for unskilled tasks in defined sectors of activity shall be trained and informed about exposure to risks and dangers before starting work. These workers are entitled to protection equipment.

The Committee takes note of this information. It asks for information in the next report on whether the standard of protection, information, training and access to medical supervision described in previous reports has been maintained since the entry into force of Act No. 319/2006. It also asks whether temporary workers covered by Act No. 52/2011 have access to medical supervision and to representation at work. It then asks for concrete examples on how such access is put into practice.

Other types of workers

The Committee previously examined (Conclusions 2003, 2007 and 2009) the protection of self-employed, home and domestic workers. It concluded that the situation 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 regulations (Conclusions 2007 and 2009).

The representative of the Government informed the Governmental Committee that extending the protection of Act No. 319/2006 and related regulations to domestic workers was being considered, but that no schedule for amendments was determined.[9] The report does not indicate any change in the current exclusion of domestic workers from the scope of Act No. 319/2006 and related regulations.

The Committee takes note of this information. Recalling that all workers, all workplaces and all sectors of activity must be covered by occupational health and safety regulations,[10] it concludes that the situation is not in conformity with Article 3§2 of the Charter on this point.

Consultation with employers' and workers' organisations

The Committee previously examined (Conclusions 2003, 2007 and 2009) the consultation of employers' and employees' organisations in the set-up of occupational health and safety legislation and regulations.

The report states that forums and institutions for the consultation of employers' and workers' organisation have been reframed during the reference period by Act No. 62/2011 of 10 May 2011 on social dialogue. In accordance with Sections 82 et seq. of Act No. 62/2011, the tripartite Economic and Social Council has consultative functions in drafting legislation and regulations. In accordance with Sections 120 et seq. of Act No. 62/2011, the Commission for Social Dialogue in the Ministry of Labour, Family and Social Protection, a tripartite forum for debate between employers' and workers' representatives and the public administration, has an advisory role in drafting legislation and regulations coming under the Ministry's competence. Each Prefectorate replicates the Commission for Social Dialogue to ensure tripartite consultations at territorial level. Exposure limit values on hazardous chemical agents are determined and amended by the Committee on Occupational Safety and Health, established in accordance with Minister of Health and Minister of Labour, Family and Social Protection Joint Order No. 1297/2011.

The report also states that the SLI involves the social partners through co-operation agreements and participation of their representatives in seminars, workshops, and round tables. Results of the research conducted *inter alia* on occupational health and safety under the Plan for Research and Development for 2009-2012 are made available to employers' and workers' organisations.

The Committee takes note of this information. It notes that a system for consulting employers' and workers' organisations, conductive to fostering social dialogue, exists at the level of the national and territorial authorities. It asks for information in the next report on the consultation of bodies with responsibility for occupational health and safety issues at company level.

Conclusion

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

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[1] *http://eur-lex.europa.eu/RECH_legislation.do*
[2] *http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:2898137891236126::::P11200_INSTRUMENT_SORT:4*
[3] *http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:90539321421013::::P11200_INSTRUMENT_SORT:4*
[4] *http://eur-lex.europa.eu/RECH_legislation.do*
[5] *http://eur-lex.europa.eu/RECH_legislation.do*
[6] *http://eur-lex.europa.eu/RECH_legislation.do*
[7] *See e.g. Conclusions 2005, Cyprus, pp. 69-72.*
[8] *http://eur-lex.europa.eu/RECH_legislation.do*
[9] *Governmental Committee, Report on Conclusions 2009, p. 17.*
[10] *Conclusions II, Statement of interpretation on Article 3, p. 12.*

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

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

Occupational accidents and diseases

The Committee previously examined (Conclusions 2003, 2007 and 2009) the situation of occupational accidents and diseases. It concluded that the situation in Romania was not in conformity with Article 3§3 of the Charter on the ground that it had not been established that statistics on occupational accidents were reliable (Conclusions 2009). It asked for information on the content of Minister of Labour, Family and Social Protection Order No. 3/2007 approving the forms for registration of occupational accidents (FIAM), sanctions applicable in case of non-reporting, and its impact on the level of accident reporting; on measures taken to address exposure to occupational disease, non-reporting of cases, difficulties in identifying workers exposed, and the unwillingness to undergo medical check-ups (Conclusions 2007 and 2009).

According to EUROSTAT data,[1] the number of occupational accidents (excluding accidents during the journey between home and the workplace) declined overall during the reference period (from 3 730 in 2008 to 2 887 in 2010), whereas the incidence rate of these accidents remained stable (from 69.41 in 2008 to 70.26 in 2010). This rate is significantly lower than the average observed in the EU-15 and in the EU-27 (from 2 269.42 in 2008 to 1 582.71 in 2010). The number of fatal accidents declined sharply (from 340 in 2008 to 201 in 2010), as did the incidence rate of these accidents (from 8.81 in 2008 to 4.61 in 2010), which nevertheless remains far above the average rate observed in the EU-15 and the EU-27 (from 2.27 in 2008 to 1.87 in 2010). The report states that occupational accidents are recorded by the State Labour Inspectorate (SLI) and gives noticeably different figures for the number of occupational accidents (5 107 in 2008 and 3 678 in 2010) and the number of fatal accidents (504 in 2008 and 272 in 2010).

The report indicates that the number of reported cases of occupational disease, which are monitored by the National Centre for Community Environment Risk Monitoring at the Bucharest Public Health Institute, decreased during the reference period (from 1 286 in 2008 to 1 065 in 2010). According to SLI annual reports for 2008 (pp. 80-86) and 2010 (pp. 97-103),[2] occupational diseases concentrated especially in work in the manufacturing and mining industries, which lead to silicosis, musculoskeletal disorders and hearing impairments, caused by vibrations, noise and chemicals.

In reply to the Committee's question, the report states that despite conformity with EUROSTAT encodings, adoption of Minister of Labour, Family and Social Protection Order No. 3/2007 did not trigger the expected increase in occupational accident figures. Under Section 39 of Act No. 319/2006 of 14 July 2006 on safety and health at the workplace, employers who do not report are punishable by fines between 3 500 and 7 000 Romanian lei.[3] The SLI supported implementation of reporting obligations with guidelines for record-keeping; encouragements to workers to report accidents; increased number of sanctions for non-reporting by employers and prompt investigation of accidents reported by workers.

In the Governmental Committee,[4] the Representative of the Government declared that the reporting of occupational accidents was regular since Act No. 319/2006, Government Decision No. 1425/2006 approving methodological standards to implement Act No. 319/2006, and Minister of Labour, Family and Social Protection Order No. 3/2007 determined obligations and processes to report, inquire and record. The inquiry is conducted by a commission set up by the

employer in light accidents, with the report sent to the territorial labour inspectorate for approval, whereas it is conducted by the territorial labour inspectorate in cases of fatal or serious (i.e. involving danger, invalidity, disappearance) accidents. To counter problems with the reporting of occupational diseases, the Expert Commission on Occupational Health had been set up by Minister of Health and Minister of Labour, Family and Social Protection Joint Order No. 1256/2008 approving membership and mandate of the Expert Commission, to examine individual complaints on cases of occupational disease; and the National Centre for Community Environment Risk Monitoring had been set up to record cases of occupational disease in accordance with the EUROSTAT reporting system.

The Committee takes note of this information. It notes that the system based on Act No. 90/1996 which it examined in Conclusions 2007 has largely been maintained under Act No. 319/2006 and relevant regulations. Recalling that satisfactory application of the Charter cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised,[5] and that the frequency of occupational accidents and their evolution are key aspects of monitoring the effective observance of the right enshrined in Article 3§3 of the Charter,[6] it asks for an explanation in the next report of discrepancies in the number of fatal accidents given in the report (504 in 2008 and 272 in 2010) and the figure published by EUROSTAT (340 in 2008 and 201 in 2010). It also asks that the next report include statistics on fatal occupational diseases.

On the basis of both sources with statistical data, the Committee notes a persistent decrease in occupational accidents, but a level of fatal accidents which is still too high. It also notes that, because it entrusts employers with the investigation of all light occupational accidents and that the level of fines is relatively low, the accident reporting system is not sufficiently efficient in practice to meet the requirements of Article 3§3 of the Charter. The Committee therefore concludes that the situation in Romania is not in conformity with Article 3§3 of the Charter on the ground notes that measures to reduce the excessive rate of fatal accidents are insufficient.

Activities of the Labour Inspectorate

The Committee previously examined the activities of the labour inspectorate (Conclusions 2003, 2007 and 2009). It requested information on the organisation and functioning of the SLI; confirmation that the coverage rate by inspection visits of 40% of the total labour force is correct; and information on the coverage rate by inspection visits dealing specifically with occupational health and safety (Conclusions 2009).

In reply to the Committee's question, the report states that the SLI is a specialized administrative body, which operates under Government Ordinance No. 1377/2009 approving the Regulations relating to the organization and the functioning of the Labour Inspectorate. The SLI and its 42 territorial subdivisions exercise state authority in the fields of labour relations and occupational health and safety for all industries (except military and civil nuclear activities) and all workers (except self-employed and domestic workers).

The report indicates that the overall number of labour inspectors appointed for occupational health and safety in the SLI and territorial labour inspectorates increased during the reference period (from 505 in 2008 to 539 in 2010). After university, labour inspectors may attend vocational training, but the participation in such training decreased since 2009 due to budget constraints. Labour inspectors have standard office equipment but the number of cars and the volume fuel to conduct inspection visits are restricted.

In reply to the Committee's request, the Representative of the Government confirmed before the Governmental Committee[7] that the coverage rate by inspection visits of 40% of the total labour force was correct, since labour inspectors must record the overall number of workers in the undertakings they visit. The Representative of the Government also indicated that the coverage rate was 49.84% in 2008. The report however states that no figures are available on the coverage rate. In accordance with its annual framework programmes of action (PCAs), the SLI focused its awareness campaigns and inspection visits on industries with increasing occupational accidents (mining, construction, road transport, forestry, metallurgy and agriculture). It conducted awareness campaigns on biological risks; chemical risks; manual handling and explosible atmospheres; and vulnerable groups.

According to the SLI annual report for 2010 (pp. 47-52), labour inspectors may apply measures such as notices of violation with or without deadlines for remedy; impose contraventional sanctions such as warnings, fines, suspensions of activity in case of immediate danger; withdraw establishment licenses or strike out commercial registry; or report situations to the prosecution authorities. The report indicates a sharp increase in the number of contraventional sanctions (from 40 383 in 2008 to 95 917 in 2010) over the reference period, and a decrease in the overall volume of fines (55 428 000 to 42 790 000 Romanian lei). The number of suspensions of activity increased slightly (from 814 in 2008 to 980 in 2010) but fell sharply most recently (183 in 2011). The number of cases filed with the prosecution authorities also rose (161 in 2008 and 193 in 2010). The overall number of inspection visits in occupational health and safety matters remained stable (87 290 in 2008 and 86 403 in 2010). The data provided by the Representative of the Government before the Governmental Committee show a sharp increase of most figures in comparison with the previous reference period.

The Committee takes note of this information. It is satisfied that the inspection activity carried out during the reference period has amplified in comparison with the previous reference period and that the number of contraventional sanctions is linked to that increase. It notes that inspection visits are supplemented by prevention, advice and awareness-raising activities. It nevertheless notes that the SLI does not inquire into the vast majority of occupational accidents and that, according to the SLI annual report for 2010 (pp. 50-52), most contraventional sanctions applied in 2010 were warnings and only about 10% of them were fines.

The Committee asks that the next report contain information on the authority (legislative framework; staffing; means; powers; activities; sanctions) in charge of labour inspection on civil nuclear activities. In order to gauge the efficiency of the labour inspectorate and the deterrent nature of the sanctions imposed, it also asks for information concerning any measures taken to focus inspection visits on small and medium-size enterprises; to include self-employed and domestic workers; and to inquire into complaints filed by workers or their representatives. It then asks for information on the number of withdrawals of establishment licenses, on the number of criminal sentences passed on cases filed with the prosecution authorities, and for an explanation of the sharp drop in suspensions of activity in 2011. Pending receipt of this information, the Committee defers its conclusion on this point.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 3§3 of the Charter on the grounds that measures to reduce the excessive rate of fatal accidents are inadequate.

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[1] *http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=hsw_mi03&lang=fr*

[2] *Inspecţia Muncii: Raport de activitate a Inspecţiei Muncii 2008, Bucureşti: Ministerul Muncii, Familiei şi Protecţiei Sociale 2008; Inspecţia Muncii: Raport de activitate a Inspecţiei Muncii 2010, Bucureşti: Ministerul Muncii, Familiei şi Protecţiei Sociale 2010, available at http://www.inspectmun.ro/site/RAPORT%20ANUAL/RaportAnual.html*

[3] *1 RON is equivalent to 0.225 €.*

[4] *Governmental Committee, Report on Conclusions 2009, T-SG(2011)1 final, pp. 31-34.*

[5] *International Commission of Jurists against Portugal, Complaint No. 1/1998, decision on the merits, 9 September 1999, §32.*

[6] *Mutatis mutandis Conclusions XIV-2, Statements of interpretation on Article 3§2, pp. 43-46.*

[7] *Governmental Committee, Report on Conclusions 2009, pp. 34-36.*

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Right to the highest possible standard of health

The Committee notes from WHO that life expectancy at birth in 2009 (average for both sexes) was 73,61 (the EU-27 average that same year was 79,0). The average life-expectancy rate in Romania is still low relative to other European countries, nearly six years shorther than the European Union average.

The death rate (deaths/1 000 population) was 12.12 in 2010, this indicator fluctuated only marginally during the reference period.

The Committee notes from the report that the most important causes of death are cardiovascular diseases (72% of all deaths in 2010), cancer (22%), digestive diseases (7.7%), respiratory diseases (5.9%), accidents, injuries and poisoning (4%). Another source[1] confirms that Romania has one of the highest levels of cardiovascular disease amongst European countries. The Committee asks what measures are being taken to combat these causes of mortality.

Infant mortality decreased slightly since the last reference period. In 2010 the rate was 9.79 per 1 000 live births, down from 12 per 1 000 live births in 2007. The Committee notes this decline, but considers that the rate is still high relative to other European countries (the EU-27 rate in 2010 was 4.1 per 1 000).

As regards the maternal mortality rate, the Committee notes that in 2010 the rate reached 24.03 deaths per 100 000 live births, with no improvement since the last reference period (the same rate was registered in 2005). This rate is also considerably above the average in other European countries.

In its previous conclusion the Committee found that the situation was not in conformity with Article 11§1 on the grounds that measures to reduce infant and maternal mortality rates were inadequate (Conclusions 2009). The Committee notes from the information submitted by the Romanian representative to the Governmental Committee (Report Concerning Conclusions 2009, T-SG(2011)1 final) some of the measures taken by the Government to improve the situation, mainly a joint programme with the World Bank which included a component on "Maternal and neonatal medical assistance". The report also mentions activities undertaken by departments of obstetrics-gynecology health units, such as training of healthcare personnel in maternity and the organisation of courses in this area. However, in view of the fact that infant and maternal mortalities remain among the highest in European countries, the Committee finds that insufficient efforts have been undertaken in this field, and therefore reiterates its previous finding of non-conformity on this ground.

Right of access to health care

The Committee takes note of the legislative developments and health programmes adopted during the reference period. The report states that among the priorities of the Ministry of Health is the implementation of equal access of citizens to basic health care. The Committee refers to its previous conclusion for an overview of the medical services provided free of charge by the health system (Conclusions 2009).

According to the same source mentioned above[2], changes introduced by the health care reforms in Romania have aimed at attaining the major objectives common to most countries: universal and fair access to a reasonable package of health services, control of costs of health services and efficient delivery and allocation of resources. To date, the objectives have not been reached, due to the scarcity of resources, lack of experience and ongoing changes in the political and economic environment. The Committee invites the Government to comment on the latter. It also wishes to be kept informed of health reforms implemented in the future, and whether these are translating into a better health status of the population (indicators mentioned above).

Concerning management of waiting lists and waiting times, the Committee found in its previous conclusion that the situation was not in conformity with the Charter given the repeated lack of information information on this matter (Conclusions 2009). The information submitted by the Romanian representative to the Governmental Committee indicates that access to health services is immediate in Romania as concerns family physicians, specialised ambulatory or emergency services. It is only for diseases which need organ treatment, tissue transplant or where treatment is made under therapeutic protocols that waiting lists are drawn up. The report also refers to Order No. 44/53 of 20 January 2010, with measures to improve the efficiency of ambulatory care, including waiting time. The Committee notes this information, but nevertheless considers that it does not demonstrate that health care is provided within medically acceptable periods. It therefore asks for specific information on the average waiting time in days for care in hospitals, as well as for a first consultation with a specialised caregiver, with a view to showing that access to health care is provided without undue delays. In the meantime, it reserves its position on this point.

In its last conclusion, the Committee also found that the situation was in breach of the Charter on the ground that the conditions in certain psychiatric hospitals were manifestly inadequate (Conclusions 2009). The Committee notes from the information submitted by the Romanian representative to the Governmental Committee (Report concerning Conclusions 2009, T-SG(2011)1 final) that the Ministry of Health has started reforms in the mental health system, including increased funds, the adoption of a National Strategy and Action Plan, and the setting up of a National Center for Mental Health. The Committee notes this information, but nevertheless considers that it does not demonstrate that conditions in psychiatric hospitals have improved. It therefore asks for specific information on the standards governing the conditions in psychiatric hospitals, and how the monitoring of such conditions takes place. In the meantime, it also reserves its position on this point.

In the last examination the Committee adopted a general question addressed to all States on the availability of rehabilitation facilities for drug addicts, and the range of facilities and treatments. As the report does not address this issue, the Committee requests that information be included in the next report.

As regards the right to protection of health of transgender persons the Committee received submissions from the International Lesbian and Gay Association (European Region) (ILGA) stating that "in Romania the practice requires transgender people to undergo sterilisation as a condition of legal gender recognition". Moreover, it claims that "the authorities fail to provide adequate medical facilities for gender reassignment treatment (or the alternative of such treatment abroad), and to ensure that medical insurance covers, or contributes to the coverage of such medically necessary treatment, on a non-discriminatory basis". In this respect, the Committee refers to its question on this matter in the General Introduction.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 11§1 of the Charter on the ground that the measures taken to reduce infant and maternal mortality rates have been insufficient.

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[1] *Health Systems in Transition, Vol. 10 No. 3 2008, http://www.euro.who.int*
[2] *ibid.*

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

In its previous conclusion, the Committee asked for information on health awareness raising campaigns and found that insufficient measures were taken to inform the public on the problem of infant and maternal mortality (Conclusions 2009). The Committee notes that there are programmes on child and women health, but asks if there exist specific promotional activities for safe motherhood. In the meantime it reserves its position on this point.

As regards general awareness-raising campaigns, the Committee notes the detailed information submitted by the Romanian representative to the Governmental Committee (Report Concerning Conclusions 2009, T-SG(2011)1 final), indicating that under the aegis of a National Programme for health promotion and education of the Ministry of Health (in cooperation with NGOs and other private and public bodies), a large number of activities were organised concerning the prevention of alcohol consumption, smoking and sexually transmitted diseases.

As to health education in schools, the information submitted by the Romanian representative to the Governmental Committee (Report Concerning Conclusions 2009, T-SG(2011)1 final) states that the Ministry of Education organises health education through the subject of biology, as well as other topics according to the educational level and grade, focusing on issues such as hygiene, prevention of drinking, smoking and drug consumption. There are also extra-curricular programmes which aim at promoting a healthy lifestyle and active citizenship for children in disadvantaged communities, especially in rural areas. On the basis of this information, the Committee finds that adequate health education programmes in schools are in place, and therefore finds that the situation is no longer in breach of the Charter on this ground.

Counselling and screening

In its previous conclusion, the Committee noted that counselling and screening for women and children were free, but requested further information on the types of screening and counselling that were carried out (Conclusions 2009). As the report provides no information, the Committee asks again for a description of the services available, the frequency of such preventive check-ups and the proportion of women and children covered. The Committee underlines the importance of receiving information on this topic given the prevailing high rate of infant and maternal mortality (see conclusion under Article 11§1). In the meantime, it considers that it has not been established that counselling and screening for pregnant women and children are frequent enough or that the proportion of mother and children covered is sufficient.

The Committee recalls that free medical checks must be carried out through the period of schooling. The report fails to provide information on this matter. The Committee therefore asks that information be included in the next report, notably on the frequency of school medical examinations, their objectives, the proportion of pupils concerned and the level of staffing.

The report also fails to provide, for the second time, any relevant information on counselling and screening for the population at large. The Committee recalls that pursuant to this provision there should be screening, preferably systematic, for the diseases which constitute the principal causes of death. Preventive screening must play an effective role in improving the population's state of health. The Committee therefore asks again what mass screening programmes are

available in the country. In the meantime, it considers that it has not been established that prevention through screening is used as a contribution to the health of the population.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 11§2 of the Charter on the grounds that it has not been established that:

- counselling and screening for pregnant women and children are frequent enough or that the proportion of mother and children covered is sufficient;
- prevention through screening is used as a contribution to the health of the population.

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

The Committee takes note of the different pieces of legislation and regulations adopted by Romania during the reference period for the reduction of environmental risks, in particular in the field of air quality, water management, asbestos and environmental noise. Several of the legal texts mentioned in the report have been adopted with a view to transposing EU legislation into national legislation. There exist 142 automatic stations for air monitoring accross the country, and the main instrument for implementing EU legislation on water quality is the watershed management plan, which sets out specific objectives and programmes in this area.

The Committee asks the next report to provide information on the institutional structures for the proper implementation of the above-mentioned legislation. It also wishes to receive information on the levels of air pollution, contamination of drinking water and food intoxication during the reference period, namely whether trends in such levels increased or decreased.

Tobacco, alcohol and drugs

The report provides detailed information on the different programmes, action plans and awareness-raising campaigns implemented during the reference period to prevent the consumption of tobacco, alcohol and drugs.

The Committee notes from another source[1] that Romania has ratified the WHO Framework Convention on Tobacco Control (on 27.01.2006). According to the latter, the only public places with smoke-free legislation are health care facilities. As in its previous conclusion the Committee had noted that smoking had been banned since 2006 in bars, restaurants, discos and pubs (Conclusions 2009), the Committee asks for a clarification on the situation regarding the latter. In general, it asks the next report to provide updated information on the state of laws on smoke-free environments, health warnings on tobacco packages, and tobacco advertising, promotion and sponsorship. In the meantime, it reserves its position on this point.

The Committee also asks the next report to provide trends or statistics in respect of the consumption of alcohol, tobacco and drugs.

Immunisation and epidemiological monitoring

The report mentions that the National Immunisation Programme aims at protecting human health against major diseases that can be prevented by vaccination. However, it provides no information on the immunisation coverage rates. The Committee recalls that the latter information should be included in each report.

The Committee notes the adoption of a national programme for monitoring and controlling communicable diseases (namely, HIV infection, tuberculosis and sexually transmitted diseases). It asks if the measures implemented under such a programme have had a positive impact on the incidence of these diseases.

Accidents

The report provides detailed information on the preventive and educational activities implemented to reduce road accidents and victims. In 2011, for the third consecutive year, the

main indicators of serious road accidents showed a decline in the number of injured and deceased persons (for example, 10 645 severe accidents in 2008 down to 9 260 in 2011). It also mentions the activities and measures taken to prevent accidents at home by fire, as well as on responding to other specific emergency situations. The number of persons injured or deceased as a result of fires also declined during the reference period.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Romania is in conformity with Article 11§3 of the Charter.

[1] *WHO Report on the Global Tobacco Epidemic, 2011*

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

Risks covered, financing of benefits and personal coverage

In its previous conclusion (Conclusions 2009) the Committee asked for information concerning the personal coverage of social security risks.

As regards unemployment benefit, the Committee notes from the report that the share of the unemployed not receiving unemployment benefits stood at 59,75% in 2011. The Committee understands that only 40% of all unemployed persons have received unemployment benefit in 2011. It asks what were the main reasons for which the majority of unemployed persons did not receive the benefit.

In order to be able to assess the effective personal coverage, the Committee asks the next report to provide figures, for the period of reference, for every branch of social security. For medical care, the report should provide the information on the percentage of persons insured out of the entire population. For pension, sickness, maternity and unemployment benefits (income replacement benefits), information should be provided on the percentage of persons insured out of the total active population. The Committee holds that if this information is not provided in the next report, there will be nothing to establish that the personal coverage of social security benefits is adequate.

Adequacy of the benefits

The Committee notes from Eurostat that in 2011 50% of median equivalised income amounted to € 88.

Unemployment benefit

As regards unemployment benefit (unemployment indemnity), the Committee notes from MISSOC that the amount of benefit is a function of person's average income, length of contribution period and the Reference Social Indicator. The latter *(indicator social de referinta)* stood at RON 500 (€112) in 2011.

The Committee further notes from the report that the reference social indicator is set by the Government decision. Persons having contributed to the unemployment insurance for less than 3 years receive 75% of the reference social indicator. The Committee notes such persons received € 84 in 2011 in unemployment benefit.

The report also refers to persons who are 'treated as unemployed' or 'assimilated to unemployed' and states that they receive 50% of the reference social indicator (€ 56) in unemployment benefit. According to the report, this category of workers covers persons, having accumulated a minimum contribution period of 12 months. Such persons will receive unemployment benefit if they are registered at employment agencies, have no income or have income from legal activities but lower than the reference social indicator in force and do not qualify for retirement.

The Committee thus observes that the minimum level of unemployment benefit paid to persons 'treated as unemployed' amounts to € 56 which is well below the poverty threshold and is therefore, manifestly inadequate.

As regards the circumstances in which a person may be refused unemployment benefit or the latter may be withdrawn, the Committee asked in its previous conclusion whether there was a reasonable initial period during which the worker could refuse a job or training offer which did not match his/her skills without losing unemployment benefit. The Committee observes that the report describes the rights emanating from Law No 76/2002 as amended, stipulating the conditions of granting and withdrawal of unemployment benefit. However, the report fails to reply to the Committee's question whether there is a reasonable initial period during which the worker may refuse an unsuitable employment offer without losing the entitlement to benefit. Therefore, the Committee holds that it has not been established that the legislation provides an effective guarantee of protection against unemployment risk.

Sickness benefit

As regards sickness benefit, (*beneficiu pentru incapacitate de munca*) it is paid to the insured persons by the employer from the first day until the 5th day of temporary work incapacity. It amounts to 75% of the average insured gross earnings over the last 6 months.The amount is increased to 100% of the average insured earnings over the last 6 months if the sickness is caused by: tuberculosis, AIDS, any type of cancer, group A infectious and contagious diseases and medical and surgical emergencies.

The duration of sickness benefit *(Beneficiu de boala)* is 183 days in any one year period, counted from the first day of the contingency. As from the 90th day medical leave can only be extended to 180 days, with the approval of the social insurance expert physician.

The Committee notes that the report fails to provide information on the minimum level of sickness benefit. Therefore, the Committee holds that it has not been established that the level is adequate.

In this respect, the Committee asks that in the absence of the statutory minimum level of this benefit, the next report should contain information on the minimum wage. The Committee seeks confirmation that 75% of the minimum wage will represent the minimum level of benefit in question.

Old-age benefit

According to MISSOC, the statutory coverage is based on the personal statute for the persons with domicile or residence in Romania (or without domicile or residence in Romania according to legally binding international instruments). There are two regimes – compulsory and voluntary. Compulsory regime covers employees, civil servants, the unemployed, self-employed, if their monthly average net income exceeds the threshold of 35% of the Average Gross Earnings (as projected for the Annual State Social Insurance Budget) i.e. RON741 (€167). Voluntary regime is for members of the schemes not integrated into the public system of pensions.

In its previous conclusion the Committee held that it had not been established that the adequacy of old age benefit was secured. The Committee notes from the report of the Governmental Committee (TS-G (2010)1, §173) that since February 2009 and under Law No. 196 of 29 May 2009, Romanian authorities introduced the minimum guaranteed social pension. The setting up of this right represents a measure for improving the living standards of pensioners, in order to avoid social exclusion of a disadvantaged category of population in the context of the current economic crisis.

The Committee notes from the report that since 2010 the social allowance for pensioners is set annually by fiscal laws and may be amended in relation to macroeconomic indicators and

financial resources. The amount of social allowance for pensioners was set at RON 350 in 2009, 2010 and 2011. The Committee also notes from MISSOC that the Social Indemnity for Pensioners (minimum pension) amounted to RON 350 (€79) in 2011. The Committee notes that this level falls between 40% and 50% of Eurostat median equivalised income. The Committee asks whether pensioners in receipt of the minimum pension are entitled to other benefits. In the meantime the Committee reserves its position on this issue.

The Committee further notes from the report that in January 2011, new law on pensions entered into force which aimed to solve the major problems facing the public pension system, especially an alarming increase in the number of disability and early retirement. Regarding this reform, the Committee refers to its conclusion under Article 12§3.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 12§1 of the Charter on the grounds that:

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

Article 12 - Right to social security

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

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

Romania has ratified the European Code of Social Security on 9 October 2010 and has accepted parts II, III, V, VII and VIII of the Code.

The Committee of Ministers has not adopted any resolutions on the application of the European Code of Social Security by Romania during the reference period. Therefore the Committee has to make its own assessment.

The Committee recalls that Article 12§2 obliges States to establish and maintain a social security system which is at least equal to that required for ratification of the European Code of Social Security. The European Code of Social Security requires acceptance of a higher number of parts than ILO Convention No. 102 relating to social security; six of the nine parts of the Code must be accepted although certain branches count for more than one part (medical care counting per two and old-age counting per three).

The Committee recalls that in order to assess whether the social security system stands at a level at least equal to that necessary for the ratification of the Code, it has to be provided with a thorough information regarding the branches covered, the personal scope and the level of benefits offered.

The Committee notes that Romania is bound by ILO Convention No. 102 since 15 October 2009, having accepted parts II, III, V, VII and VIII. It however notes that the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) decided to wait for information on most of the accepted parts of the Convention No. 102 accepted by Romania before assessing the situation (CEACR: Individual direct request concerning Social Security – Minimum Standards – Convention, 1952, No. 102, adopted in 2012 and published at the 102th session of the International Labour Conference, 2013).

The Committee notes, with regard to the personal scope and the level of benefits, that it finds in its conclusion under Article 12§1 that the situation is not in conformity on the grounds that the minimum level of unemployment benefit is manifestly inadequate, that it has not been established that the legislation provides an effective guarantee of protection against unemployment risk and that it has not been established that the minimum level of sickness benefit is adequate. In addition, it asks for figures for every branch of social security in order to be able to assess the effective personal coverage. The Committee also notes that it deferred its conclusion under Article 12§3. It also refers to its conclusion on Article 16 as concerns family benefits (Conclusions 2011). It notes that it reserved its position on this point, pending receipt of the requested information.

In addition, Romania has ratified only one convention of the International Labour Organisation in the field of social security, in addition to Convention No. 102, namely Convention No. 168 (Employment Promotion and Protection against Unemployment, 1988).

The Committee requests that the next report provide detailed information on each of the branches of social security so as to enable it to determine whether Romania maintains a social security system at a satisfactory level.

Conclusion

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

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

The Committee takes note of the further reforms in the field of old-age pension. It notes that the Government Emergency Ordinance No 6/2009 established minimum guaranteed social pension. By Law No 118/2010 the minimum guaranteed social pension was renamed social allowance for pensioners.

The Committee takes note of the evolution of the pension point value from RON 581 in 2008 to RON 732 in 2010. It also notes that the replacement rate of old-age pensions has gone up from 52.8% in 2008 to 61% in 2010.

The Committee further notes from the report that in January 2011, a new law on the unitary public pension entered into force (Law no 263/2010) which aimed at solving the major problems facing the public pension system, especially an alarming increase in the number of disability and early retirement.

The new legal framework was developed aiming at ensuring the sustainability of the pension system in the medium and long term, in the context of ageing of the population, economic crisis and the decline in the number of taxpayers. The unified pension system is based on the principles of uniqueness, contributiveness, equality, distribution and social solidarity. It aims at expanding the scope of compulsory insurance by integrating the persons belonging to specific systems, improving the financial sustainability of the pension system, ensuring fair treatment of insured persons, discouraging early retirements and increasing the retirement age.

A series of elements were introduced in the public pension system, such as raising the retirement age for certain staff, increasing the number of contributors to the unified public pension system to include those whose income derives solely from liberal professions and discouraging early partial retirements and abusive invalidity retirement, medically unjustified.

The Committee takes note of the results of application of this new legislative framework, namely: a decrease in the total number of pensioners as well as those registering for partial early retirement and those enrolled in disability pension schemes.

The Committee considers that the objective set by the reform is not contrary to the Charter as long as it has not endangered the existence of the pensions branch of the social security system and it has served the aim to consolidate public finances, in order to prevent deficits and debt interest from increasing, as one way of safeguarding the social security system (Statement of Inteprertation, Conclusions XIV-1). Moreover, there is no evidence that the cumulative effect of the amendments implemented has had a disproportionate effect on the most vulnerable groups of population.

The Committee recalls that in its decision on the merits of 7 December 2012 of the Complaint No 76/2012 – Federation of employed pensioners of Greece (IKA-ETAM) v. Greece §69, it held that it is necessary by virtue of the requirements of Article 12§3 for that State Party to maintain the social security system on a satisfactory level that takes into account the legitimate expectations of beneficiaries of the system and the right of all persons to effective enjoyment of the right to social security. This requirement stems from the commitment of State Parties to ‘endeavour to raise progressively the system of social security to a higher level’ which is expressly set out in the text of Article 12§3.

The Committee asks how the reform has affected, in practice, the minimum level of pension benefit and its overall personal coverage – i.e. the total number of persons insured out of the

total active population. The Committee also asks what amendments were made to other branches of social security (unemployment, sickness, invalidity).

Conclusion

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

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

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

Right to equal treatment

Equal treatment between nationals and nationals of other States Parties in respect of social security rights shall be ensured through the conclusion of bilateral or multilateral agreements or through unilateral measures.

The coordination of social security systems of the European Union Member States (EU) is governed by Regulation (EC) No. 883/2004 and by Regulation (EC) No. 987/2009 (these regulations apply also to Member States of the European Economic Area – EEA). Article 4 of Regulation (EC) No. 883/2004 explicitly provides for equality of treatment between nationals, on the one hand, and, on the other hand, nationals of other Member States, stateless persons and refugees resident in the territory of a Member State who are or have been subject to the social security legislation of one or more Member States, as well as to the members of their families and to their survivors. Regulation (EC) No. 883/2004 and Regulation (EC) No. 987/2009 are extended by Regulation (EU) No. 1231/2010 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality, as well as to members of their families and their survivors, provided that they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State (Article 1). This concerns, inter alia, the situation of a third country national who has links only with a third country and a single Member State.

The Committee recalls that, in any event, under the Charter, EU States are required to secure, to the nationals of other States Parties to the 1961 Charter and to the Charter not members of the EU, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1). In order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

Romania had previously negotiated agreements with Turkey (2002) and "the former Yugoslav Republic of Macedonia" (2007). The Committee also notes that the 1960 agreement with the Soviet Union is still in force in respect of Armenia, Ukraine and the Russian Federation. In addition, an agreement guaranteeing the principle of equal treatment was signed with the Republic of Moldova in April 2010 (and came into force in September 2011). Agreements were being negotiated with Serbia and Albania during the reference period. The Committee requests that the next report indicate whether these agreements have been signed and what Romania intends to do regarding the other States Parties, namely Andorra, Azerbaijan, Bosnia and Herzegovina, Croatia and Georgia.

In respect of the payment of family benefits, the Committee previously considered that, under Article 12§4, any child resident in a country is entitled to these benefits on the same basis as the citizens of the country concerned. Whoever the beneficiary may be under the social security scheme – the worker or the child – the States Parties are obliged to guarantee, through unilateral measures, effective payment of family benefits to all children resident on their territory. In other words, the requirement for the child concerned to reside on the territory of the State concerned is compatible with Article 12§4 and with its Appendix. However, as not all the countries apply such a system, the States which impose a child residence requirement are

under an obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those States which apply a different entitlement principle.

The Committee asks whether the above-mentioned agreements concerning Turkey, Armenia and the Russian Federation also cover family benefits. It recalls that it asked whether such agreements existed with Albania, Georgia and Serbia, or whether they were planned and on what timescale. Since the report does not answer this question, the Committee recalls that States Parties can comply with their obligations not only through bilateral or multilateral agreements, but also through unilateral measures. The Committee asks that the next report indicate whether the Government plans to conclude agreements with States Parties with which there are no such agreements or unilateral measures and, if so, when. It underlines that if the necessary information is not provided in the next report there will be nothing to show that Romania is in conformity with the Charter on this issue.

The Committee recalls that it has previously enquired whether the award of social security benefits to nationals of States Parties not belonging to the EU or to the EEA is generally subject to a condition regarding period of residence or employment. As there is still no reply in the report, the Committee reiterates the question. It underlines that if the necessary information is not provided in the next report there will be nothing to show that Romania is in conformity with the Charter on this issue.

Right to retain accrued benefits

The Committee notes the joint statement made in the framework of the Governmental Committee by the States that were not in conformity because it could not be guaranteed that persons moving to another State Party would retain their accrued rights, according to which:"The Governmental Committee considers that ratification of the European Convention on Social Security and the conclusion of bilateral agreements is a means of securing compliance with Article 12§4 of the Charter. The retention of social security benefits, irrespective of the beneficiaries' movements between States Parties, calls for co-ordination of the administrative procedures of the States concerned. States should therefore consider the need for further bilateral agreements with non-member countries of the EU if they have a mutual interest in concluding such agreements and there is a significant movement of population between the two countries concerned.") (see Governmental Committee, Report concerning Conclusions 2009, Doc. T-SG(2011)1, §209).

The Committee reiterates, however, States' obligation, under Article 12§4, to conclude multilateral or bilateral agreements, or to take unilateral measures to ensure the right to retention of accrued benefits whatever the movements of the beneficiary.

In its previous conclusion (Conclusions 2009), the Committee noted that retention of accrued benefits is secured to nationals of States Parties covered by EU regulations or bound to Romania by a bilateral agreement and that bilateral agreements cover retirement, invalidity and survivors' pensions. The Committee asked whether the agreements concluded ensure retention of the benefits accrued in respect of the other types of social security provision and concluded that the situation was not in conformity with the Charter because exportability of benefits was not guaranteed for nationals of States Parties not covered by EU regulations and not bound to Romania by bilateral agreement. The report does not answer the question and again only addresses that concerning the exportability of retirement pensions. In addition, since the situation has not changed, the Committee upholds its finding of non-conformity on the ground

that the retention of accrued benefits for persons moving to a State Party which is not covered by EU regulations or not bound by an agreement with Romania is not guaranteed.

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

There should be no disadvantage for persons who change their country of employment where they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. This requires, where necessary, the aggregation of employment or insurance periods completed in another territory and, in the case of long-term benefits, a pro–rata approach to the conferral of entitlement, the calculation and payment of benefit (Conclusions XIV-1, Portugal; Conclusions XV-1, Italy).

States may choose between the following means in order to ensure maintenance of accruing rights: multilateral convention, bilateral agreement or, unilateral, legislative or administrative measures. The principle of accumulation of insurance or employment periods applies to nationals of States Parties covered by EU regulations. With respect to States not bound by EU regulations, the Committee observes that the guarantee of this principle is one of the parts of the European Convention on Social Security directly applicable to both eligibility to benefits and to the calculation of benefits in all the branches of social security covered in the convention. As Romania has not ratified this convention, it cannot rely on it to show that it has taken sufficient steps to guarantee the maintenance of accruing rights.

In its previous conclusion (Conclusions 2009), the Committee noted that accumulation of insurance or employment periods is secured in principle to nationals of States Parties covered by EU regulations or bound to Romania by a bilateral agreement and that bilateral agreements cover retirement, invalidity and survivors' pensions. The Committee asked whether the agreements concluded guarantee the principle of accumulation of insurance or employment periods where the other types of social security provision are concerned. The report states that, under Law No. 76/2002, unemployment benefits may be granted to foreign nationals and stateless persons who were employed in Romania, provided that they contributed to the Romanian unemployment insurance scheme for a minimum of 12 months during the 24 months preceding the date of the application. Unemployment benefit entitlements may be transferred to the countries where the persons concerned live, under the conditions governed by international and bilateral agreements. The report adds that nationals of States Parties to the 1961 Charter and the Charter may receive unemployment benefits for a maximum of 12 months.

The Committee previously found (Conclusions 2004, 2006 and 2009) that nationals of States Parties not covered by EU regulations or not bound to Romania by bilateral agreement did not have the possibility of accumulating insurance or employment periods completed in other countries. Since the situation has not changed, the Committee upholds its finding of non-conformity on this head.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 12§4 of the Charter on the grounds that:

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

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

The Committee takes note of the guidelines adopted by the Ministry of Labour, Family and Social Protection in the field of social assistance for the period 2008-2011 and of the Law No. 292/2011, aimed at improving and developing social assistance (previously regulated by Law No. 47/2006). According to the Government Programme for 2009-2012, it is envisaged to review the entire social benefit package in view of optimising the cost/benefit ratio. The Committee notes from the report that a National Social Observatory has been set up to collect and analise the data related to public policies in the field inter alia of social protection as integral part of the social inclusion process, to elaborate national reports and formulate recommendations and proposals, in cooperation with national and international institutions.

The benefits provided in cash or in kind include the following:

- Guaranteed minimum income (Law No. 416/2001 as amended and supplemented, in particular by the Law No. 276/2010, Law No. 416/2010 and the Government decision related to Methodological Norms for the application of the provisions of the Law No. 416/2010), calculated as the difference between the family or single person net monthly income and the monthly income levels stipulated by the law – as from 2011, the social aid is granted from the State budget allocated to the Ministry of Labour, Family and Social Protection, the payment being made through the National Agency for Social Benefits and its territorial structures. According to the report, RON 651 million (€152 499 000) were allocated in 2011 for an average monthly number of 319,248 beneficiaries;
- Family support allowance established on 1st January 2011 by Law No. 277/2010 – this means-tested allowance is granted to families with children if the monthly net family income (divided by the number of family members) is lower than a threshold of 0.74 Social Reference Indicator (around € 80); the report to the Governmental Committee (Governmental Committee, Report concerning Conclusions 2009, Doc. T-SG(2011)1final, § 321) indicates that the amount of complementary family allowance and the allowance for single parent families are increased by 25% for recipients of social aid who have children;
- Heating allowances for the cold season (Government Emergency Ordinance No. 70/2011 on social protection measures during the cold season) providing support to households using thermal energy (gas, wood, coal, oil) for their central heating. Heating allowances are paid from November 1 to March 31 and are not conditioned on the performing of work for the collectivity.

In addition, there are general – non means-tested – benefits as well as benefits available to specific categories of people, upon condition of resources or not. Emergency aid can be granted, under Law No. 416/2001, to persons and families in need as a result of natural disasters, fires, accidents as well as other special events specified by law. Examples of the types of aid provided by law are presented in the report.

The Committee has previously noted that minimum income benefits could be suspended in case of failure to perform community work and concluded that it was not established that this might not entirely deprive a person without resources of his/her means of subsistence. It notes that the

new law provides for incentives to employment (increased benefits and other rights if the person go back to work or start an independent activity) and that the refusal to work or to participate to activation measures (training, qualification, re-qualification etc.) can involve the reduction or temporary suspension of the benefits. It also notes from MISSOC and the report to the Governmental Committee the conditions attached to the requirement to perform community work: at least one of the family members should work in the interest of the local authority, if (s)he is aged between 16 and the standard retirement age, is able to work and is not attending full-time education. In particular, the report to the Governmental Committee details the limits of the work concerned and the possible derogations to the obligation and points out to the fact that, apart from the exceptions set by the law, the mayor can decide whether the benefits should be suspended, having assessed the situation of the family and the circumstances (for example, more tolerance is shown during the cold season). The information provided also indicates that amendments are being considered aimed at identifying other forms of sanction to the person refusing to perform community work, so as not to deprive him/her of his/her means of subsistence. The Committee takes note of this information and asks the next report to provide updated information in this respect, as well as on any available data concerning the cases where benefits have been suspended (scale and frequency of penalties) or where they have not been suspended despite the failure to perform community work (criteria used to assess the reasons) and on the available remedies. It furthermore notes that certain benefits, such as heating allowances, are not conditional on performing community work. It notes however that different amounts are granted to recipients of social aid and asks whether the suspension of the guaranteed minimum income does not affect the eligibility to the benefits granted to beneficiaries of social aid. Pending receipt of information, it reserves its position on this issue.

Given that Romania has not accepted Article 23 of the Charter (the right of elderly people to social protection), the Committee assesses the level of non-contributory pensions paid to a single elderly person without resources under this provision. The Committee notes that the report does not provide information in this respect. It understands that the social aid available to individuals and families in need also applies to elderly people and asks the next report to confirm this.

Level of benefits

To assess the situation during the reference period, the Committee takes account of the following information:

- Basic benefit: according to MISSOC and the information provided to the Governmental Committee, the guaranteed minimum income was RON 125 (€29) per month for a single person and RON 225 (€53) for a family of two persons. The amount of social aid is calculated as a difference between the guaranteed minimum income and a person's net income and it's increased by 15% if at least one member of the family is working.
- Additional benefits: according to the report and MISSOC allowances for heating of a dwelling are granted to the beneficiaries of social aid. The information provided to the Governmental Committee indicates that the costs of thermal energy for central heating are 100% reimbursed, costs of gas are reimbursed up to RON 262 (€61) per month if the monthly net income per family member is up to RON 155 (€36) (according to MISSOC, the reimbursement is up to 90% of the heating invoice, with a 10% increase for a single person and 100% can be granted to recipients of social aid) and costs of heating by wood, coal and oil are reimbursed up to RON 58 (€14)

for recipients (single persons or families) entitled to Social Aid. The report furthermore indicates that children and students from families entitled to social aid are also entitled to scholarships for compulsory education but also for pre-university and university education. In conformity with the Law No. 116/2002, the local councils are also obliged to ensure access of socially excluded single persons and families to public services of strict necessity, such as water, electrical energy, heating etc. The report to the Governmental Committee furthermore indicates that, under Law No. 208/1997, beneficiaries of social aid are entitled to free social services in the welfare canteens, providing free meals twice a day (people who have temporarily no income can also benefit by these services 90 days a year).

- Medical assistance: according to MISSOC, the report and the information provided to the Governmental Committee, under Law No. 116/2002 and Law No. 95/2006, the beneficiaries of social assistance are covered by the health care scheme and the contribution for sickness and maternity benefits is paid by the National Agency for Social Benefits. In 2010, 482 711 recipients of social aid were registered to social health insurance, of which 34.2% (165 293 persons) benefited from medical assistance. The Committee notes from the information provided to the Governmental Committee that beneficiaries of social aid are entitled to emergency care as well as special care. It recalls in this respect that under Article 13§1 everyone who lacks adequate resources must be able to obtain medical care free of charge in the event of sickness as necessitated by his/her condition and reiterates its question as to whether a person without resources requiring treatment for a sickness, not necessarily of an emergency type, receives adequate health care. In this connection, it notes from another source (FEANTSA country fiche, 2012) that homeless people are reported to face considerable barriers to healthcare as, according to Law No. 95/2006, uninsured persons can receive a maximum of 72 hours medical care and the unemployed and those not receiving state benefits must pay €8 per month for health insurance cover; the same applies for mental health care. The Committee asks the next report to comment on this and, in the meanwhile, does not find it established that people without resources are entitled to an adequate level of medical care.
- Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value): it was estimated at €88 in 2011.

The Committee notes that the guaranteed minimum income, which corresponds barely to 16% of the median equivalised income, is manifestly inadequate. It notes that a number of additional benefits are available in cash or kind, covering in particular heating, education and food. While considering that these additional benefits are certainly relevant, it notes that the information provided does not allow to deduce to what extent they complement the basic benefit and, therefore, to establish that the level of social assistance is adequate. In addition, it does not find it established that people without resources are entitled to an adequate level of medical care.

Right of appeal and legal aid

In its previous conclusion (Conclusions 2009) the Committee did not find it established that the right of appeal was effectively guaranteed. In the reply transmitted to the Governmental Committee, the authorities indicate that, under Article 46 of the Law No. 47/2006, any decision on rights to social services or social benefits can be disputed before the Social Mediation

Commission, which has a role of mediation between the services of public assistance and the claimants and can grant free of charge consultations in the field of social assistance rights. The Social Mediation Commission must reply to the request of mediation within 30 days and its decisions can be appealed within 30 days before the courts. Disputes concerning social assistance rights are exempted from the judiciary tax. Before seizing the competent administrative court, the claimant must first request the revocation – in whole or in part – of the contested act before the public authority which issued it, within 30 days. The person can also seize the Labour inspection, who is in charge of supervising the implementation of the provisions in force in the social assistance field.

The Committee notes this information and asks the next report to clarify whether the administrative courts can be seized without first seizing the Social Mediation Commission or even in case the latter rejects the request for mediation and whether they have jurisdiction to rule on points of law as well as on the merits of the case. In the meanwhile, it reserves its position on this issue.

Personal scope

The Committee noted in its previous conclusion (Conclusions 2009) that all persons permanently or temporarily resident in Romania are eligible for social and medical assistance. It asks the next report to provide further details in this respect and in particular to precise whether non-EU nationals residing in Romania and lacking resources are also entitled to social and medical assistance and whether any length of prior staying is required for foreign residents in order to benefit from social and medical assistance.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 13§1 of the Charter on the ground that it has not been established that the level of social and medical assistance is adequate.

Article 13 - Right to social and medical assistance

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

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

The Committee had previously noted (Conclusions 2006) that Article 16 of the Constitution stipulates that: "Citizens are equal before the law and public authorities, without any privilege or discrimination" and that Ordinance No. 137/2000 prevents and penalises all forms of discrimination in the exercise inter alia of political rights (Article 1§2.c) as well as of economical, cultural and social rights (Article 1§2.e). According to Article 2§1 of the ordinance, the term "discrimination" encompasses any difference of treatment, exclusion, restriction or preference, based in particular on social status or membership of a disadvantaged group of the population.

Furthermore, the Committee notes from the additional information provided that the values and general principles of the national social assistance system include (Article 5 of Law No. 292/2011 on social assistance) non discrimination, also based on social grounds, equality , participation as well as confidentiality of information relating to the beneficiaries of social assistance.

Conclusion

The Committee concludes that the situation in Romania is in conformity with Article 13§2 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

The Committee notes from the report that, according to the Law on social assistance No. 292/2011, the social services are the activities undertaken to meet social needs, at a general or special level (individual, family or group) to overcome difficult situations, to prevent and fight against social exclusion risks, to promote social inclusion and improve life quality. They are organised in various forms/structures, taking into account the specificity of the activities developed, as well as the special needs of each category of beneficiaries (children, families, persons with disabilities, elderly, victims of domestic violence or human being trafficking, homeless, persons suffering from addictions, etc.) in relation with their socio-economic situation, health, education level and social environment. The services can be organised as public or private services and be provided, with or without accommodation, in a normal or a special regime (i.e. with extended eligibility and access, ensuring for example anonymity of beneficiaries etc.). The categories and types of social services, the activities and functions corresponding to each type of service, as well as the framework regulations of organisation and functioning are established by the classified list of social services, approved by Government decision, at the proposal of the Ministry of Labour, Family and Social Protection.

The persons and families in difficulty benefit of social services within the programmes of community actions aimed at preventing and fighting against risks of social exclusion, approved by decisions of the local/county councils. The social services provides can be public or private persons, but must in any case be accredited according to the law. The report explains in detail the competences in terms of elaboration of public policies, evaluation and monitoring of social services quality, organisation and provision of social services and their financing.

According to the report, under Law No. 116/2002, specific measures aimed at preventing and fighting social exclusion concern young people aged between 16 and 25, which include professional counselling, mediation and employment support (contract of solidarity). The report also provides information on the amounts spent (RON 9 460 064, i.e. €2 216 060) in 2011 through the National Fund of Solidarity to build, renovate, maintain, arrange and modernise social assistance institutions or socio-medical institutions concerning in particular hospitals and care centres for elderly people as well as for other specific categories of people (people with disabilities, victims of domestic violence, homeless people etc.). According to the report, in 2011, RON 23 280 091 (€5 453 460), i.e. 20.6% more than the previous year, have been spent to subsidize non-governmental organisations and associations providing social assistance and social services on average to 15 718 beneficiaries monthly. The total amount spent through the National Agency for Payments and Social Inspection in order to provide social services (subsidies, programmes of national interest, investments for social assistance centres) was in 2011 RON 37 296 853 (€ 8 736 940), i.e. 14.2% less than in 2010.

As regards the amounts spent for the assistance measures aimed at fighting social exclusion in general, the report indicates that, in 2010, the local councils facilitated the access to housing to 36% of the socially excluded single persons (5 751 individuals) and 35.1% of the socially excluded families (4 379 families) for a total budget of RON 34,324,233 (€8 130 550), representing 43% of the amounts needed. 37 315 single persons and 32 108 excluded families benefited of access to strict necessity public services, for a budget of RON 23 638 628 (€5 599 400). The report indicates that although the allocated amounts represented 67.5% of the amounts needed, compared to the number of beneficiaries, it ensured the access of 92.6% of the socially excluded individuals and 82.8% of the excluded families. During the same period,

38 471 individuals and 34 817 socially excluded families have benefited of other measures taken by local councils for preventing and fighting social exclusion, for a cost of RON 32 817 386 (€7 773 610). In total, in 2010, the amount spent for these measures was RON 90 780 247 (€21 503 600), corresponding only to 59.8% of the amounts estimated as needed.

The Committee recalls that Article 13§3 specifically concerns services offering advice and personal assistance to persons without adequate resources or at risk of becoming so and requires the states to guarantee that such persons are offered advice and assistance to make them fully aware of their rights to social and medical assistance and of the ways to exercise these rights. In this context, the Committee had previously asked whether primary services are provided with sufficient means to give appropriate assistance as necessary, what is the total spending on these services and whether access is free of charge. Considering the fact that the information provided does not indicate to what extent people without resources or at risk of becoming so have effectively access to services offering advice and personal assistance and the fact that the resources allocated to these services are admittedly insufficient to meet the needs, it considers that the situation is not in conformity with Article 13§3 of the Charter.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 13§3 of the Charter on the ground that it has not been established that people without resources or at risk of becoming so have effective access to adequate services offering advice and personal assistance to prevent, remove or to alleviate personal or family want.