



January 2010

European Social Charter (revised)

European Committee of Social Rights
Conclusions 2009 (ROMANIA)

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

This text may be subject to editorial revision.

Introduction

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, the 1998 Additional Protocol and the Revised Charter. In respect of national reports, it adopts "conclusions" in respect of collective complaints, it adopts "decisions".

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.¹

The Revised European Social Charter was ratified by Romania on 7 May 1999. The time limit for submitting the 8th report on the application of this treaty to the Council of Europe was 31 October 2008 and Romania submitted it on 15 January 2009. On 25 May 2009, a letter was addressed to the Government requesting supplementary information regarding 13§1. The Government submitted its reply on 26 June 2009.

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).
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Romania has not accepted Articles 3§4, 13§4, 14, 23 and 30.

The applicable reference periods were:

- 1 January 2003 – 31 December 2007 for Article 11;
- 1 January 2005 – 31 December 2007 for Articles 3, 12 and 13.

The present chapter contains 13 conclusions :

- 2 cases of conformity : articles 12§3, 13§2 ;
- 9 cases of non-conformity : articles 3§1, 3§2, 3§3, 11§1, 11§2, 12§1, 12§2, 12§4, 13§1.

In respect of the 2 other cases concerning articles 11§3 and 13§3, the Committee needs further information. The Government is therefore invited to provide this information in the next report on the articles in question.

The next Romanian report deals with the accepted provisions of the following articles belonging to the third 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 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 2009.

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 - The right to safe and healthy working conditions*Paragraph 1 - Health and safety and the working environment*

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

The Ministry of Labour, Social Solidarity and Family, which is the main body responsible for occupational health and safety, drafted in co-operation with the Ministry of Health, the "Policy and strategy for Romania in the field of health and safety for the period 2004-2007".

In reply to the Committee's question on the consultation of social partners, the report indicates that the draft of the normative act of approval of the strategy, prior to approval, was the object of tripartite discussions within the Social Dialogue Commission of the Ministry of Labour, Social Solidarity and Family which offers a forum where social partners are invited to discuss legal acts before the approval procedure begins. This Commission is an autonomous public body whose role is to enable dialogue at national level between employers, trade unions and the Government. It has an advisory role with regard to economic strategies and policies, in case of conflicts at branch and national level occurring between social partners, and concerning the development and promotion of social dialogue and solidarity. Within the framework of different specialised committees of the Commission, experts from both social partners and the Government examine and discuss regulations and propose where necessary amendments which are then submitted to the plenary Commission.

The main objectives of the national policy on occupational health and safety 2004-2007 were the following: transposing the EU acquis in this field by 2006; developing and strengthening the institutions having responsibilities with regard to the implementation of the relevant legislation; developing activities for the prevention of accidents and diseases by creating a culture of prevention and combining theory with practice; developing and enhancing social structures in order to increase the involvement of social partners both at decision making level and at implementation level. The report states that the national strategy is reviewed periodically. The report states that the next national policy for 2008-2013 will follow the objectives set out in the Community Strategy 2007-2012 on safety and health at work.

The report does not provide any information describing how the State's national policy deals specifically with occupational health and safety training (qualified professionals), information (statistical system and dissemination of knowledge), quality assurance (professionals qualifications, certification systems for facilities and equipment), and research (scientific and technical expertise). In the absence of such information, which has already been requested in its previous conclusions (Conclusions 2005 and 2007), the Committee considers that it has

not been established that the situation of Romania is in conformity with Article 3§1 on this point.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 3§1 of the Revised Charter on the ground that it has not been established that the national policy on health and safety includes training, information, quality assurance and research in a satisfactory manner.

Article 3 - The right to safe and healthy working conditions

Paragraph 2 - Issue of safety and health regulations

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

Content of the regulations on safety and health at work

The Committee has already noted that the Safety and Health at Work Law No. 319/2006 entered into force on 1 October 2006. According to the report, it fully implements Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. The report specifies that the legislative framework includes the following acts: Governmental Decision No. 601 of 13 June 2007 which completes the transposition of Directives 92/57/EEC on construction sites, 83/477/EEC on asbestos, 2002/44/EC on vibration and 2003/10/EC on noise; Governmental Decision No. 600 of 13 June 2007 on the protection of young people at work, transposing Directive 94/33/EC; Governmental Decision No. 557 of 6 June 2007 on the completion of measures designed to promote the improvement of safety and health at work for employees employed under a fixed-term contract and temporary workers, transposing Directive 91/383/EEC. The report gives a list of other Governmental decisions which transpose relevant Directives, including on exposure to electromagnetic fields, carcinogen or mutagen agents, potential risks of explosive atmosphere, vibration, noise and asbestos as well as concerning the safety and health of workers in the mining and quarrying sectors, and for temporary or mobile construction sites. On the basis of the information provided in the report, the Committee considers that the general obligation that rules on occupational health and safety must specifically cover a large majority of the risks listed in the general introduction to Conclusions XIV-2 has been met.

Protection against dangerous agents and substances

Protection of workers against asbestos

The Committee already noted that both Council Directive 83/477/EEC¹ of 19 September 1983 on the protection of workers against risks connected with exposure to asbestos during work as amended by Directive 2003/18/EC² of the European Parliament and

of the Council of 27 March 2003 setting a reduced single maximum limit value of exposure to asbestos were transposed into domestic law.

However, the Committee asks whether Commission Directive 1999/77/EC³ of 26 July 1999 which bans the placing on the market and use of products containing asbestos as from 2005 has been transposed into domestic law or if measures to the same effect have been taken. Furthermore, the Committee asks whether the authorities have considered drawing up an inventory of all contaminated buildings and materials. Bearing in mind the importance of this question in the light of the right to health of the population (Article 11), the Committee asks for the next report to provide information on steps taken to this effect.

Protection of workers against ionising radiation

The Committee noted in its last conclusion (Conclusions 2007) that this area is governed, inter alia, by Law No. 90/1996 and that the National Committee for the Control of Nuclear Activities is responsible for drawing up standards related to nuclear activities and also for controlling the application of these standards. In reply to the Committee, the report indicates that this Committee is responsible for co-ordinating and controlling safety and health in this sector by providing prevention and protection services for the purpose of implementing of the provisions of the Safety and Health at Work Law No. 319/2006. The Ministry of Public Health and this Committee are competent to establish dose limits which cannot be exceeded in the work context. However, the Committee reiterates its question on whether these dose limits correspond to those recommended by the International Commission on Radiological Protection (ICRP). It also asks whether there are any plans to transpose Council Directive 96/29/Euratom⁴ 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.

Protection of temporary workers

The report states that Governmental Decision No. 557/2007 provides that employers have a duty to ensure employees who are a contract of temporary employment or who are employed through temporary agencies with the same conditions of occupational safety and health, particularly regarding personal protective equipment, as other employees. According to the aforementioned Governmental Decision, the employer has a duty to inform this type of worker, before they start work, of the qualifications, skills or medical services that apply in the activity to be undertaken as well as the major risks specific to the workplace. The employer has a duty to provide resources for medical services for the medical screening of employees' health, in accordance with Governmental

Decision No. 355/2007 on the supervision of workers' health and with Article 7(6) of the above-mentioned Safety and Health at Work Law. The Committee asks for confirmation that these provisions on medical services apply to temporary workers.

Personal scope of the regulations

The Committee noted in its previous conclusions (Conclusions 2007) that under the Labour Health and Security Law No. 319/2006 the definition of workers has been expanded to include all persons performing a legal activity, irrespective of having a contract or not, but that domestic staff continue to be excluded from the scope of the law. The Committee recalls that health and safety rules must apply at all workplaces without exception, including private homes, and that domestic workers must therefore be protected. The report provides no information on this point. The Committee therefore considers that the situation is still not in conformity on this point.

Consultation with employers' and workers' organisations

The framework of consultation with employers' and employees' organisation in the preparation of occupational regulations has been examined under Article 3§1.

Conclusion

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

¹ Official Journal No. L 263 of 24/09/1983.

² Official Journal No. L 097 of 15/04/2003.

³ Official Journal No. L 207/18 of 06/08/1999.

⁴ Official Journal No. L 159 of 19/06/1996.

Article 3 - The right to safe and healthy working conditions

Paragraph 3 - Provision for the enforcement of safety and health regulations by measures of supervision

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

Occupational accidents and diseases

The report states that the total number of occupational injuries has decreased during the reference period (5 030 in 2005, 5 005 in 2006, and 4 601 in 2007). This trend is confirmed by the data provided to the ILO.⁵ According to this source, the rate of non-fatal injuries per 100 000 workers decreased during the reference period taken as whole (76 in 2005 and 70 in 2007).

However, the Committee again notes the extremely and noticeably low number and frequency of occupational accidents, both in absolute terms and compared to other States Parties. In reply to the Committee's question concerning under-reporting, the report does not give any information about the level of reporting in Romania and possible problems encountered in this domain but indicates that a reform of the procedure of declaration, investigation and registration of occupational accidents was initiated with the adoption of the Law on security and health No. 319/2006 of 31 October 2006. It does not provide any information on the content of the legislation, the changes made to the reporting system and its impact in practice. The report indicates that this legislation was repealed and replaced by the Order of the Ministry of Labour, Social Solidarity and Family No. 3 of 3 January 2007, according to which Eurostat methodology is now taken into account for the registration of work accidents. The Committee asks for more details on the content of this Order, notably on sanctions foreseen in case of lack of reporting of work accidents and, considering that the Order was adopted towards the end of the reference period, on how the reform will have impacted on the level of reporting of accidents in the next few years. The Committee considers that the report has failed to demonstrate that during the reference period the system of reporting of occupational accidents was effective in producing reliable statistics, and also finds that the reform of the system which has been undertaken indicates that the need was also felt at national level to improve this situation. As this is the third consecutive report in which reliable statistics are not available, the Committee holds that it has not been established that the situation in Romania is in conformity with the requirements of Article 3§3 of the Revised Charter on this ground.

According to data available on ILO's website, the number of fatal accidents has decreased during the reference period (531 in 2005, 416 in 2006 and 344 in 2007). Eurostat data indicate that in 2005 the incidence rate of fatal accidents at work reached 5.9, one of the highest in European Union countries and well above the European Union average (EU-27) which was 2.6 on the same year. However, no data is available for the next years. The Committee underlines the importance of providing standardised incidence rates of occupational accidents, including fatal accidents, in order to provide an accurate picture of the national situation and trends.

The Committee notes from another source⁶ that a study published in 2008 by the Institute for Public Health of Bucharest reveals that between 1997 and 2007 the total number of workers exposed to occupational diseases doubled (915 000 workers in 1997, 1 831 000 in 2007), while the number of new cases of occupational diseases decreased (2 060 cases in 1997, 1 353 in 2007). The Committee also notes from this source that the number of new cases has increased in 2007 after a decade of global decrease: there were 1 353 cases in 2007 compared to 990 in 2004. In a previous study of the Institute for Public Health on this subject, which was published in 2007, several issues of concern were identified: the non-reporting of numerous cases of occupational diseases; the difficulty of precisely calculating the number of exposed workers, due to

frequent changes in the profile of companies, for example as a result of restructuring of the production process, or to instances of undeclared work;**Error! Hyperlink reference not valid.** the fact that those who are exposed to hazardous factors do not undergo specialised medical examinations and regular checkups, due to the lack of appropriate medical equipment. The 2008 study also underlines the disparity between counties as regards the average number of exposed workers per occupational doctor. The Committee asks whether concrete steps have been taken to address these various issues.

Activities of the labour inspectorate

The report provides no additional information on the organisation and functioning of the Labour Inspectorate. The Committee asks that updated information be provided in the next report on this point, including on resources of the Labour Inspectorate.

The Committee notes that during the reference period the number of inspection visits increased from 70 181 in 2005 to 87 220 in 2006 before decreasing to 81 049 in 2007. The number of enterprises visited followed a similar trend (68 745 in 2005; 83 493 in 2006; 77 399). According to the report, around 40% of the total workforce was covered by these inspections. In view of this particular high level of coverage compared to other countries, the Committee asks for confirmation that this proportion is correct and, if possible, for the percentage of workers covered by inspections dealing specifically with occupational health and safety.

As regards enforcement, the report states that the number of penalties has significantly increased during the reference period (8 521 in 2005, 22 045 in 2006 and 28 572 in 2007), and so has the global amount of these penalties (10 272 610 lei in 2005 and 49 969 300 lei in 2007). Similarly, the number of machines stopped from operating and the number of enterprises whose activity was stopped also increased significantly (reaching respectively 5 691 and 479 in 2007). The number of cases referred to courts decreased during the reference period (177 in 2005, 172 in 2006 and 132 in 2007).

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 3§3 of the Revised Charter on the ground that it has not been established that statistics on occupational accidents are reliable.

¹<http://laborsta.ilo.org/>

²Eurofound, <http://www.eurofound.europa.eu/ewco/index.htm>

Article 11 - The 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.

State of health of the population – General indicators

Life expectancy and principal causes of death

Average life expectancy at birth in 2006 was 69.2 for men and 76.2 for women⁷ (the EU 27 average in 2004 was 75.2 for men and 81.5 for women⁸). The mortality rate in 2007 was 10.25 per 1 000 inhabitants⁹ (in 2006 the EU 27 average was 6.48 per 1 000 inhabitants¹⁰).

According to the report the main causes of death are cardiovascular disease, tumours, digestive disorders and respiratory diseases.

Infant and maternal mortality

The infant mortality rate fell from 15 deaths per 1 000 live births in 2005 to 12 deaths per 1 000 live births in 2007¹¹ (the EU 27 average was 4.7 per 1 000 in 2006¹²). The maternal mortality rate was 24 deaths per 100 000 live births in 2005.¹³ The Committee notes that the infant and maternal mortality rates are still considerably higher than the average in other European countries¹⁴ despite the fact that the infant mortality rate fell from 21.6 deaths per 1 000 live births in 1997 to 17.3 deaths in 2002 and 12 in 2007¹⁵. By contrast, while the maternal mortality rate decreased from 43.3 deaths per 100 000 live births in 1997 to 22 deaths in 2002, it rose again afterwards to 24 per 100 000 in 2005.

According to the report, some cases of maternal mortality are still the result of terminations of pregnancy, particularly in rural areas, and this in turn shows a need to promote improvements to family planning and new forms of contraception. As part of the National Programme for Women and Children's Health, family planning clinics distribute hormonal contraceptives in an attempt to reduce unwanted pregnancies.

The Committee asks the next report to provide information on all measures taken to reduce the infant and maternal mortality rates.

The Committee notes that it considered previously (Conclusions 2005 and 2003) that the situation in Romania was not in conformity with Article 11§1 because the infant and maternal mortality rates were clearly too high. It considers that the situation in Romania is still not in conformity with Article 11§1 of the Revised Charter as it has not been demonstrated that adequate

measures have been taken to reduce the infant and maternal mortality rates, which are still clearly too high.

Health care system

Access to health care

The Committee asks again for up-to-date information on the situation as regards access to care for disadvantaged categories of the population. If the next report does not provide the necessary information, there will be nothing to show that the situation in Romania is in conformity with Article 11§1 of the Revised Charter.

The medical services provided free of charge by the Romanian health system are as follows: Outpatient or hospital treatment provided under contracts between the health insurance funds and the Romanian Medical Association, emergency medical services, some dental services, pharmaceutical products obtained on prescription, rehabilitation services, home help and preventive care for pregnant women and children.

Despite repeated requests (Conclusions 2003, Conclusions 2005) there is still no information in the report about waiting list management and health care waiting times. The Committee concludes from this that the situation in Romania is not in conformity with Article 11§1 of the Revised Charter.

The state health care budget in 2006 was 5.7% of GDP (compared to 4.9% in 2004)¹⁶ and, despite the increase, this is still one of the lowest levels in Europe¹⁷. The Committee asks if it planned to devote a larger share of Romania's GDP to health care spending.

Health care professionals and facilities

There were 6.58 hospital beds per 1 000 inhabitants in 2006¹⁸, whereas the EU 27 average in 2005 was 5.9 beds per 1 000 inhabitants¹⁹. There were 0.7 psychiatric hospital beds per 1 000 inhabitants in 2006²⁰, compared with a European average in 2005 of 0.6 per 1 000 inhabitants²¹.

In 2007, there were 41 455 physicians in total, or 19 doctors per 10 000 inhabitants¹⁶ and there were 4 360 dentists or 2 dentists per 10 000 inhabitants. The same year there was a total of 90 698 nurses and midwives, or 42 per 10 000 inhabitants¹⁷. There were also 901 pharmacists¹⁸, which amounts to less than 1 per 10 000 inhabitants. The Committee notes that these figures are lower, sometimes substantially lower, than those in most other European countries¹⁹. It asks what measures are planned to improve the situation.

The Committee reiterates that conditions of stay in hospital, including psychiatric hospitals and other care centres, must be satisfactory and compatible with human dignity (Conclusions XVII-2 and 2005, statement of interpretation of Article 11, §5; Conclusions 2005, Romania). It also points

out that it found previously (Conclusions 2005) that the situation in Romania was not in conformity with Article 11§1 because the conditions in certain psychiatric hospitals were manifestly inadequate. In the absence of any information, the Committee must reiterate its conclusion of non-conformity.

Conclusion

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

- the measures that have been taken to reduce the infant and maternal mortality rates, which are clearly too high, are inadequate;
- the conditions in certain psychiatric hospitals are manifestly inadequate;
- it has not been established that there are reasonable health care waiting times and that the management of waiting lists is satisfactory.

¹ Eurostat

² Ibid

³ Ibid

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ WHO

⁸ Eurostat

⁹ Ibid

¹⁰ WHO

¹¹ Ibid

¹² Eurostat

¹³ Ibid

¹⁴ WHO

¹⁵ Ibid

Article 11 - The 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.

Encouraging individual responsibility

Public information and awareness-raising

Informing the public, particularly through awareness-raising campaigns, must be a public health priority (Conclusions 2007, Albania). Measures should be taken to prevent activities that are damaging to health (smoking, alcohol, drugs) and to promote the development of a sense of individual

responsibility (healthy eating, sex education, environment) (Conclusions 2005, Moldova). Activities may be more or less developed in accordance with the nature of the public health problems in the countries (Conclusions XV-2, Belgium).

The report refers only to measures taken outside the reference period and so the Committee repeats its questions.

The Committee therefore asks for the next report to provide detailed information on the implementation of the information campaigns forming part of the national action plan to prevent smoking and the number of towns and cities covered. It also asks to be informed of the action planned to combat alcoholism and drug addiction.

The Committee refers to its conclusion under Article 11§1, in which it finds that the situation in Romania is not in conformity with Article 11§1 because not enough steps have been taken to reduce the infant and maternal mortality rates, which are still clearly too high. It notes that this public health problem has not given rise to any specific information and awareness-raising campaigns and that this poses a *de facto* problem of conformity with Article 11§2 of the Revised Charter²². The Committee concludes from this that Romania is not in conformity with Article 11§2 of the Revised Charter because it has not been established that measures are taken to inform the public about the problem of infant and maternal mortality.

Health education in schools

Health education should be provided throughout the period of schooling and included in school curricula. The Committee considers that apart from the family, the most appropriate institution for health education is the school, since the general objective of education is to communicate knowledge and prepare pupils for life. It refers in particular to Committee of Ministers Recommendation No. R (88)7 on school health education and the role and training of teachers. Health education in schools should cover the prevention of smoking and alcohol abuse, sexual and reproductive education, in particular with regard to prevention of sexually transmitted diseases and Aids, road safety and the promotion of healthy eating habits (Conclusions XV-2, Belgium).

In the absence of a reply, the Committee asks again for the next report to provide detailed information on how measures to prevent smoking, alcoholism and drug addiction are included in school curricula.

Despite the Committee's repeated requests, there is still no information in the report on health education activities designed to prevent the harmful effects of smoking and alcoholism and the spread of sexually transmitted diseases and Aids. It considers therefore that the situation in Romania is not in conformity with Article 11§2 of the Revised Charter.

Counselling and screening

Population in general

Preventive screening must play an effective role in improving the population's state of health. Therefore, in fields where it has proved to be an effective means of prevention, screening must be used to the full (Conclusions XV-2, Belgium). In particular, there should be screening, preferably systematic, for the diseases which constitute the principal causes of death (Conclusions 2005, Moldova).

In the absence of any reply, the Committee asks again for the next report to provide detailed information on this subject. If the next report does not provide the necessary information, there will be nothing to show that the situation in Romania is in conformity with Article 11§2 of the Revised Charter.

Pregnant women, children and adolescents

Counselling and screening should be free for pregnant women and children and regularly available throughout the country (Conclusions 2005, Moldova).

As the report states only that counselling and screening for pregnant women and children are free, the Committee asks again for detailed information and figures in the next report on screening and counselling actually carried out. If the next report does not provide the necessary information, there will be nothing to show that the situation in Romania is in conformity with Article 11§2 of the Revised Charter.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 11§2 of the Revised Charter on the following grounds:

- it has not been established that there are public awareness-raising and information campaigns on the subject of infant and maternal mortality;
- it has not been established that health education activities are organised on the harmful effects of smoking and alcoholism and the prevention of sexually transmitted diseases and Aids.

¹ *Conclusions XV-2, Belgium*

Article 11 - The right to protection of health

Paragraph 3 - Prevention of diseases

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

Policies on the prevention of avoidable risks

Reduction of environmental risks

Air - The report lists the legislation enacted in order to transpose all EU Directives in this field. Air quality is assessed at national level through the National Monitoring System for Air Quality which is composed of more than 100 monitoring stations. The system is managed at the county level by the Environmental Protection Agencies (EPA). The data is available to the public.

In case of excessive limit values the local EPA is required to identify the operator responsible and to draw up plans to improve the situation. Penalties may be imposed on polluters by the National Environmental Guard.

Asbestos - The production and use of asbestos and products containing asbestos has been banned since 2003. New legal provisions were adopted on safe disposal of asbestos and products containing asbestos in 2005.

Ionising radiation - The Committee asks for up to date information on measures in place to protect the population from the risks of ionising radiation.

Noise - The Committee asks for information on legislation and measures adopted to reduce noise pollution.

Water - The Committee asks for information on legislation and measures adopted to reduce water pollution.

Food safety

Romania has transposed some of the EU legislation in this area. The Committee asks the next report to provide comprehensive information on the legislation in force on food hygiene standards and on implementation of the legislation.

Measures to combat smoking, alcoholism and drug addiction

Legislation adopted in 2004 bans smoking in bars, restaurants, discos and clubs. The Committee asks whether there is a prohibition on smoking in all public places and asks for information on the rules surrounding the sale of tobacco products to young persons.

According to the report, in 2001 37.6% of men and 12.5% of women were smokers. The Committee asks the next report to supply more recent data, this is necessary in order to assess whether the measures taken more recently have had any impact.

As regards alcohol, the report states that alcohol consumption has remained static over the last number of years, but remains fairly high 10-12 litres per capita per year. The Committee previously noted that the sale of alcohol was prohibited in schools and universities, however it wishes to receive further information on the regulations on the sale and consumption of alcohol. As well as information on recent trends in alcohol consumption.

The report provides information on the numerous campaigns launched to reduce and prevent tobacco consumption, as well as on drug abuse.

Accidents

Under Article 11§3, States must take steps to prevent and reduce accidents such as road accidents, domestic accidents, accidents at school, accidents during leisure time etc. The Committee asks the next report to provide information on measures taken to reduce injury and death by accidents as well as trends in the number of accidents.

Prophylactic measures-Epidemiological monitoring

A national Action Plan for the supervision and control of transmissible diseases and a methodology was adopted in 2005 in order to implement an early warning system for transmissible diseases.

There is also a National Programme on the surveillance and control of hospital acquired infections.

Immunisation

A National Immunisation Programme was in force during the reference period. However, the report provides no information on immunization coverage rates. The Committee asks for up to date information to be provided in the next report.

Conclusion

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

Article 12 - The 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.

The report has provided partial information on the questions asked. The Committee has thus based its assessment of the situation also on other sources such as the Mutual Information System on Social Protection (MISSOC) and EUROSTAT.

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusion (Conclusions 2006) and the information on MISSOC²³ and notes that the social security system covers the branches of social security corresponding to all traditional risks: medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors. The system continues to rest on collective funding as it is funded by contributions (employers and employees and the State) and also by the State budget.

To assess whether a significant proportion of the total and/or active population in Romania is guaranteed an effective right to social security with respect to the benefits provided under each branch, the Committee asked for figures in percentage indicating the personal coverage of each branch of social security.

According to the report, in 2007, in the public pension system there were:

- 5, 505, 419 nominally insured persons,
- 111,065 self-employed insured persons,
- 76,001 voluntary insured persons.

Also that year, 2007 there were 4,643,500 pension beneficiaries receiving benefits from the state social insurance system out of which:

- 3,037,600 total old age pension beneficiaries,
- 11,400 early retirement beneficiaries,
- 117,000 partial early retirement beneficiaries,
- 876,600 disability pension beneficiaries,
- 600,800 survivors' benefit beneficiaries,
- 931,900 pensioners taken over from the former system of pensions for farmers.

The report contains no other figures on the coverage of the population for other social security branches. The Committee reiterates that it has to regularly be provided with percentage figures concerning the coverage of the population for all social security branches. It therefore requests that the next report do so. If some of the figures are lacking, it cannot establish to what extent persons are guaranteed an effective right to social security with respect to the benefits provided under each branch.

Adequacy of benefits

A social security system must guarantee an effective right to social security with respect to the benefits provided under each branch (Conclusions XIII-4, General Introduction on Article 12)²⁴. Moreover, the Committee recalls that Article 12§1 requires social security benefits to be adequate, which means that, when they are income-replacement benefits, their level should be fixed such as to stand in reasonable proportion to the previous income and it should never fall below the poverty threshold defined as 50 % of the median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value²⁵ (Conclusions 2006, Bulgaria). The poverty threshold for 2007 was Lei 298,73, equivalent to € 71 according to EUROSTAT estimation. Adjustments of benefits are done by at least the inflation rate estimated for the following budgetary year.

Regarding sickness benefit, the benefit for work incapacity is paid by the employer until the 5th day of temporary incapacity for work of the insured person. The benefit is calculated as 75% of the average insured gross earnings over the last 6 months, and is increased up to 100%, in cases of tuberculosis, AIDS, any type of cancer, group A infectious and contagious diseases and medical and surgical emergencies.

The unemployment benefit is calculated based on the unemployment indemnity formula. The duration of payment varies according to the contribution period and it does not allow for allocation of the unemployment benefit to persons who have contributed less than a year.

The Committee recalls that the adequacy of unemployment benefits is *inter alia* also established by considering whether there is a reasonable initial period during which an unemployed person may refuse a job or a training offer not matching his/her previous skills without losing his/her unemployment benefits. In its previous conclusion (Conclusions 2006), the Committee noted that unemployment benefit could be withdrawn if the beneficiary unjustifiably refused a job offer or an activation measure. The Committee found the definition of "unjustified refusal" unclear and asked for further explanation. In this regard, the report repeats as previously, that the persons who, at the date of requesting the right, refuse a job appropriate to their training or educational background situated no more than 50 km away from their domicile or refuse to participate in the services for employment stimulation and vocational training offered by the employment agencies will not receive unemployment benefit. The report contains no information on whether there exists the possibility of a reasonable initial

period during which the person can refuse a job offer not matching his/her previous skills without losing the unemployment benefit.

The Committee asks the next report to indicate whether the option of such a refusal exists and in the case of a positive reply, how often a job offer is declined and unemployment benefits are suspended on the ground of "unjustified refusal" of a job offer. The report should also contain information on any relevant case law. Meanwhile, the Committee reserves its position as to the actual guarantee of the unemployment risk for which every worker has contributed during his working activity.

The old age benefit is calculated based on a point system where the Pension Point Value is multiplied by a variable which is based on average gross wage, reference earnings and full contribution period. The Pension Point Value may not be less than 30% of the projected average gross wage, i.e. Lei 381 (€ 113). The Committee notes that there exists no statutory minimum pension, therefore there is no guarantee that the old age pension in certain cases shall not fall below the poverty threshold.

The survivors' benefit for one survivor is calculated as 50% of the old age pension of the deceased person. Since this benefit is based on the old age pension, the Committee notes that there is no guarantee that the survivors' benefit in certain cases shall not fall below the poverty threshold.

The employment injury benefit is calculated based on the Pensions Point Value multiplied by a variable which is based on average gross wage, reference earnings and full contribution period. The Committee notes that there exists no statutory minimum benefit, therefore there is no guarantee that the employment injury benefit in certain cases shall not fall below the poverty threshold.

The Committee recalls that as regards maternity benefits their scope and level are assessed under Article 8 and as regards family benefits their scope and level are assessed under Article 16.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 12§1 of the Revised Charter on the ground that it has not been established that the adequacy of old age benefit, survivors' benefit and employment injury benefit is secured.

¹ http://ec.europa.eu/employment_social/missoc/db/public/compareTables.do

² Note: the report should provide information on all social security benefits, including information on their minimum level so that their adequacy may be assessed.

³ Note that in the event that the benefit in qstn falls between 40% and 50% of the median equalised income, its combination with other benefits, including social assistance has to be taken into account. The level of the benefit is considered in conformity if at the end of this calculation it reaches 50% of the median equalised income. If not, it is manifestly inadequate.

Article 12 - The right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that required for ratification of the International Labour Convention No. 102

Romania has submitted no information concerning the situation regarding Article 12§2.

The Committee notes that Romania has signed on 22 May 2002 the European Code of Social Security but has not ratified it. Therefore, the Committee can not take in consideration other sources such as the resolutions of the Committee of Ministers on the compliance of the states bound by the European Code of Social Security and has to make its own assessment based on the information received in the report.

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 contingencies must be accepted although certain branches count for more than one part (old-age counting per three for example).

In its previous conclusion (Conclusions 2006) the Committee was unable to assess the personal coverage of the social security system and the level of the benefits provided because of the lack of information and requested that the current report provided this information, deferring its conclusion. The Committee notes that the current report has not provided the information requested.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 12§2 on the ground that due to consistent lack of information, it has not been established that Romania maintains a social security system that meets the requirements of the European Code of Social Security.

Article 12 - The 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 notes that various amendments were introduced to the social security legislation adopted during the reference period aimed at progressively increasing the amount of social security benefits.

In 2005, there has been a reassessment of the public pension system aiming at achieving equity in treatment, preservation of acquired rights and uniqueness of applicable legislation. As a consequence, 45.38% of the pensions have received

higher points in the calculation of the pension, and an average increase of 58 Lei raised the average pension from 272 Lei to 330 Lei. The categories that benefited more significantly were: 3rd degree disability pensions, survivors' benefits, 2nd degree disability pensions, old age pensions both for incomplete and full length of contribution.

The Government Decision no. 777, dated 14.07.2005 on the increase of farmer pensions has stipulated a raise in the average annual number of pension points for farmers, resulting in a raise of farmer's pensions from 79 Lei to 239 Lei during the period January 2005 – January 2008.

The report describes the new measures related to the calculation and payment measures taken by the Romanian Government. Since July 2007, the Government Emergency Decision has stipulated that for the calculation of pensions, for the periods prior to 1963, the minimum wage was replaced by the average national wage. As a result, a number of 1.68 million pensioners have benefited of an average raise of about 30 Lei.

Regarding payment related measures, the Emergency Ordinance no. 69, dated 13.09.2006, for adjusting and completing law no. 19/2000 on the public system of pensions and other social insurance rights, has allowed for other modes of payment of the pension such as postal voucher, current account or card account, other than by post or bank account for the payment of pensions. Also, the beneficiaries of pensions within the public pension system, who have no residence in Romania, have the possibility to transfer the payment of their benefits abroad.

The report explains that during 2007, due to the economic growth of 7.7% of GDP compared to 2006, there have been three consecutive increases of the pension point value, resulting in an increase from 396.2 Lei in January 2007 to 541 Lei in November 2007. This has brought an increase of 70% of the real purchasing power of the average pensioner in November 2007 as compared to December 2004.

Taking into account the above developments, the Committee considers that Romania has endeavoured to raise progressively the social security system to a higher level.

Conclusion

The Committee concludes that the situation in Romania is in conformity with Article 12§3.

Article 12 - The 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 4a)**Right to equal treatment*

The Committee recalls that relations with the other Member States of the enlarged European Union in matters of social security are governed by Regulation (EEC) 1408/71 and Regulation (EEC) 574/72. Council Regulation (EC) 859/2003 extends Regulation 1408/71 to third country nationals and their family to members, provided that they are legally resident in a Member State and in situations not confined in all respects within a single Member State (Article 1). These regulations are also applicable to nationals of states belonging to the European Economic Area (EEA), viz. Norway, Iceland and Liechtenstein. The European Union (EU) states are required to secure, at least to the nationals of other States Parties not members of the EU, equal treatment with respect to social security rights where legally resident in their territory (Conclusions XVIII-1). As Romania has been a member of the EU since 1 January 2007, Regulations (EEC) 1408/71 and (EEC) 574/72 govern its relations with the other Member States. The Committee asks that the next report provide information on the extension, in practice, of the principle of equal treatment to nationals of third states.

During the reference period, a single social security agreement guaranteeing the principle of equal treatment came into force with another State Party not belonging to the EU or to the EEA, viz. the former Yugoslav Republic of Macedonia. Romania earlier concluded an agreement with Turkey and, according to information given by the Romanian representative at the Governmental Committee's meeting in April 2007, there is also an agreement with Albania. The Committee recalls that States Parties may fulfil their obligations not only through bilateral or multilateral agreements, but also through unilateral measures. It enquires what action is envisaged with the other States Parties, namely Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Moldova and Ukraine. It also asks whether the conclusion of such agreements is foreseen with States which have ratified the Charter outside the reference period, i.e. Serbia and the Russian Federation.

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 asked whether such agreements existed with the following countries: Albania, Armenia, Georgia and Turkey, or whether they were planned and on what timescale. In the absence of information in the report, the Committee asks that the next report provide information on the agreements contemplated with Albania, Armenia and Georgia. It also asks whether the conclusion of such agreements is foreseen with States which have ratified the Charter outside the reference period, i.e. Serbia and the Russian Federation. Where Turkey is concerned, it enquires whether the agreement concluded covers family allowances.

The Committee 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 no reply in the report, the Committee reiterates the question.

Right to retain accrued benefits

The report indicates that retention of accrued benefits is secured to nationals of States Parties covered by Community regulations or bound to Romania by a bilateral agreement. Bilateral agreements cover retirement, invalidity and survivors' pensions. The Committee asks whether the agreements concluded ensure retention of the benefits accrued in respect of the other types of social security provision.

The Committee found in its two previous conclusions (Conclusions 2004 and 2006) that exportability of benefits was not guaranteed for nationals of States Parties not covered by Community regulations and not bound to Romania by bilateral agreement. Since the situation has not changed, the Committee upholds its finding of non-conformity on this point.

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

The report indicates that accumulation of insurance or employment periods is secured in principle to nationals of States Parties covered by Community regulations or bound to Romania by a bilateral agreement. Bilateral agreements cover retirement, invalidity and survivors' pensions. The Committee asks 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 Committee previously found (Conclusions 2004 and 2006) that nationals of States Parties not covered by Community 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 Revised Charter on the following grounds:

- the retention of accrued benefits for persons moving to a State Party which is not covered by Community regulations or not bound by an agreement with Romania is not guaranteed; ;
- nationals of States Parties not covered by Community regulations or not bound by an agreement concluded with Romania have no possibility of accumulating insurance or employment periods completed in other countries.

Article 13 - The 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 Law no. 47 of 16 June 2005 on the national system of social assistance which followed the memorandum on administrative reform in the social assistance field. This law aims at establishing new principles and a new institutional framework for sustaining and implementing active and passive social protection measures with a view to strengthening social cohesion and improving the quality of life. According to this law social benefits include family benefits, social aid, indemnities and facilities. These benefits are granted to persons or families in difficulty who have insufficient incomes for their minimum needs. These benefits are means-tested based on the evaluation of a family's income. As regards the new institutional structures set up in the framework of this law, these include social inspection (organised in 2007), national agency for social benefits and a social observatory.

The Committee has previously noted that eligibility for minimum income was subject to the requirement that persons capable of working carry out a maximum of 72 hours of community work a month at the request of the local mayor. In the event of refusal to perform such work 'the mayor reserves the right to suspend the social aid that is given to that person'. In this connection the Committee asked for more information on the conditions that job offers must meet, authorised reasons for the refusal, the scale and frequency of penalties and whether means of subsistence are maintained during periods when penalties are in force. The Committee notes from the report that all persons able to work, recipients of social assistance should perform community work, or their allowance will be suspended. In case of temporary work incapacity (to be certified by a doctor), the obligation to provide community working hours can be transferred to other persons in the family receiving social aid, by the agreement of the mayor. In the light of the information received, the Committee considers that it has not been established that the possibility of withdrawal of assistance in response to failure to undertake community work does not amount to a complete deprivation of the means of subsistence for a person without resources.

In its previous conclusion (Conclusions 2006) the Committee also asked whether request for assistance could be rejected by the authorities because of lack of financial resources. It notes from the report that there are cases where local authorities experience scarcity of resources to allocate to social assistance which may cause delays in payment of social aid. However, according to the report, no case was registered where such a request has been rejected on this ground during the reference period.

Level of assistance

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

- basic benefit: according to MISSOC, in 2007 the guaranteed minimum income was lei 96 (€ 28) per month for a single person and lei 173 (€51) for a family of two persons. Social Aid (*ajutor social*) is calculated as a difference between the guaranteed minimum income and a person's net income.

- supplementary benefits: according to MISSOC allowance for heating of a dwelling by wood, coal or gas is granted to those in receipt of social aid. The Committee notes from the report that these allowances are means-tested. By Government Decision No 1197/2007 the amount of this allowance was increased by 10,7% for gas and by 5,4% for wood and coal. The Committee notes that in the winter 2007-2008 a total of 4,313,243 families received this assistance. However, it notes that there is no information on the amount of supplementary benefits paid on average to a single person without resources.

- medical care: according to MISSOC, the beneficiary of social assistance is covered by the health care scheme. The Committee notes that according to the Law no 95/2006 on the reform in the field of health care, the payment of health care contributions for recipients of social aid is ensured from local budgets. The Committee also notes from the report that those persons who are not covered by the health social insurance system for certain medical services, have the right to receive medical services in case of medical and surgical emergencies and diseases with endemic and epidemic potential, as well as those provided in the National Immunisation Programme. The Committee recalls 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. In this context, medical assistance includes free or subsidised health care or payment to enable persons to pay for the care required by their condition. The Committee asks whether a person without resources requiring treatment for a sickness, not necessarily of an emergency type, receives adequate health care. In the meantime it reserves its position on this point.

- the poverty threshold, defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value: from the supplementary information provided by the Government the Committee notes that it amounted to lei 298,73 (€ 71) in 2007.

In the absence of information concerning the amount of supplementary benefits paid on average to a single person without resources, the Committee holds that it has not been established that the level of social assistance is adequate.

Right of appeal and legal aid

In its previous conclusion (Conclusions 2006) the Committee asked for more information regarding the right of appeal and legal aid, namely, whether the courts have jurisdiction to rule on points of law as well as on the merits of the

case, and whether free legal aid was available to enable applicants to fully exercise their right of appeal. It notes that the report does not provide this information. Therefore it holds that it has not been established that the right of appeal is effectively guaranteed.

Personal scope

According to the report, all persons permanently or temporarily resident in Romania are eligible for social assistance.

Conclusion

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

- it has not been established that the level of social and medical assistance is adequate;
- it has not been established that the possibility of withdrawal of assistance in response to the failure to undertake community work does not amount to a complete deprivation of means of subsistence for the person concerned;
- it has not been established that the right of appeal is effectively guaranteed.

Article 13 - The right to social and medical assistance

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

Romania has submitted no information on Article 13§2 in its report.

The Committee notes that in its last conclusion (Conclusions 2006) the situation was found to be in conformity with Article 13§2.

The Committee asks that this matter is duly addressed in the next report which will allow the situation to be assessed.

Conclusion

Pending receipt of information requested, the Committee concludes that the situation in Romania is in conformity with Article 13§2.

Article 13 - The 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 that Government Ordinance No 86/2004 on social services focuses on new elements, such as the role of the state in developing social services, improving access to them and strengthening efficiency and quality. Under this Act social services are divided into two categories: primary services and specialised services. The role of primary services is the prevention of

situations of need and vulnerability that can lead to marginalisation or social exclusion, through identification of individuals and groups concerned, informing them about their rights and obligations, taking measures and emergency action in order to overcome crisis situations and counselling. Public social assistance services at local level have the responsibility for setting up, maintaining and developing primary social services. The Committee observes that social services have been decentralised at the community level. It takes note of the legislation implementing the above mentioned legal framework which takes into account human, institutional and financial aspects. The human aspect relates to ensuring a sufficient number of personnel and their training, whereas the institutional aspect concerns territorial decentralisation and responsibility of local actors as well as encouraging private initiative in social services. As regards the financial aspect, it implies proportional allocation of resources to match local needs as well as setting up a support mechanism by the State through providing tax advantages for private actors. The Committee also takes notes of the description of various social services such as for the disabled, for the elderly and for families. It underlines, however, that these services fall under the material scope of Article 14 which Romania has not accepted, whereas Article 13§3 only concerns persons without resources or at the 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 asks 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.

Conclusion

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