



January 2012

## **European Social Charter (revised)**

European Committee of Social Rights

Conclusions 2011

(ROMANIA)

Articles 7, 8, 16, 17, 19 and 27  
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. In respect of national reports, it adopts "conclusions" and 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.<sup>1</sup>

*The Revised European Social Charter was ratified by Romania on 7 May 1999. The time limit for submitting the 10th report on the application of this treaty to the Council of Europe was 31 October 2010 and Romania submitted it on 23 February 2011.*

This report concerned the accepted provisions of the following articles belonging to the thematic group "Children, families and migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunity and treatment (Article 27),
- the right to housing (Article 31).

Romania has accepted Articles 7, 8, 16, 17, 19§8, 19§9 and 27§2 from this group.

The reference period was 1 January 2005 to 31 December 2009 for Articles 8, 17 and 27 and 1 January 2003 to 31 December 2009 for Articles 7, 16 and 19.

The present chapter on Romania concerns 21 situations and contains:

- 7 conclusions of conformity: Articles 7§2, 8§1, 8§3, 8§4, 8§5, 17§2 et 27§2 ;
- 8 conclusions of non-conformity: Articles 7§1, 7§3, 7§5, 7§6, 7§7, 7§10, 16 et 19§7.

In respect of the other 6 situations concerning Articles 7§4, 7§8, 7§9, 8§2, 17§1 et 19§8, the Committee needs further information in order to assess the situation. 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 first thematic group "Employment, training and equal opportunities":

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

The deadline for the report was 31 October 2011.

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 1 - Prohibition of employment under the age of 15*

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

The Committee takes note of the legislative changes introduced during the reference period. The report states that the Directive 94/33/EC on the protection of young people at work has been transposed into national legislation, Government Decision (GD) No. 600/2007 on the protection of young people at work being the principal regulatory act for these matters.

Article 13§1 of the Labour Code sets the minimum age for employment at 16 years.

The Labour Code stipulates that a contract of employment may be concluded at the age of 15, with the consent of parents or guardians for activities appropriate to the physical development, skills and knowledge of child and if such activities are not harmful to his/her health development and training.

Both the Labour Code and GD No. 600/2007 prohibit employment under 15 years of age. Furthermore, Article 280 of the Labour Code stipulates that the employment of minors in violation of legal provisions relating to age and employment of minors is a crime and punishable by imprisonment of 1 to 3 years.

Light work is defined by Section 3 of GD No. 600/2007 as all activities which by the very nature of the tasks performed and the conditions under which they are made, must not prejudice the young person's security and health development and are not detrimental to school attendance, participation in orientation or training programs approved by the head of school, or their ability to benefit from the instruction received.

The report states that there are no specific provisions concerning light work for children under 15 and that a working group has been set up in order to regulate activities regarding, among others, light work, artistic, cultural and sport.

The Committee recalls that States are required to define the types of work which may be considered light, or at least to draw up a list of those who are not and that work considered to be light ceases to be so if it is performed for an excessive duration. The Committee asks that next report provides a definition of types of work which are considered light and the duration, for each age group under 18, as it may be provided for by legislation.

In its last conclusion the Committee found the situation in Romania not to be in conformity with Article 7§1 of the Charter on the grounds that: young people employed as domestic staff were not covered by labour legislation; and the prohibition of employment of persons under the age of 15 was not guaranteed in practice due to the ineffective application of the legislation.

The report states that national legislation does not distinguish between domestic staff and other categories of workers, legal provisions and collective agreements applicable to them applies equally to domestic staff, so by default also to young people. The Committee considers the situation to be in conformity with Article 7§1 of the Charter on this point.

As to domestic work, the report states that children aged under 15 employed in domestic activities are monitored by the child protection system. Such activities are considered to be gainful activities; children and their parents benefit from specialized support whatever sanctions are applied. If parents try to persuade their children to accept involvement in such activities, the act is an offense and is punishable under the Criminal Code (Article 306 on maltreatment of children). The report states, however, that the "employers" or other people that persuade children to accept some sort of work are a category that is not yet covered by current legislation. The Committee asks next report to clarify what is defined as "domestic work" under the national legislation.

In its last conclusion, the Committee asked what action was taken to deal with the offences discovered by the Labour Inspectorate.

The report provides statistics on child labour for 2009, according to which there were identified 85 children at risk out of 145 cases reported. 964 children were involved in lucrative activities out of 1129 cases reported, from which 953 forms or unconditional worst forms of child labour and

hazardous work. 749 children belonged to the group age 0-14 years and 215 children were 15-18 years old. 834 children received specialized services within their own families, and 130 special protection measures. 439 children withdrawn from employment and the remaining benefited from specialised services. 67 persons are offenders in criminal proceedings. Types of work in which children were involved, included, among others, domestic work, other lucrative activities without an employment contract, forced labour, illegal activities and street work. The report remarks that the greatest number of these children were involved in begging activity.

The report states that the Ministry of Justice has no statistics on the sanctions imposed, while the Labour Inspectorate statistics show that courts, in most cases, have dismissed cases of exploitation of child labour on the grounds that there were insufficient grounds for criminal proceedings and that it has been considered that these cases do not present danger to the society.

The Committee takes note of the inspection activities and the violations found as described in the report. It notes that despite efforts to combat the illegal employment of children, there are still a large number of children under 15 employed in tasks which cannot be considered to be light. Consequently, it reiterates its conclusion of non-conformity in this respect.

#### *Conclusion*

The Committee concludes that the situation in Romania is not in conformity with Article 7§1 of the Charter on the grounds that:

- light work is not defined by national legislation or practice;
- prohibition of employment under the age of 15 is not guaranteed in practice.

### **Article 7 - Right of children and young persons to protection**

#### *Paragraph 2 - Prohibition of employment under the age of 18 for dangerous or unhealthy activities*

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

In its last conclusion, the Committee found the situation not to be in conformity with Article 7§2 on the grounds that young people employed as domestic staff were not covered by labour legislation and the prohibition of employment of persons under 18 in dangerous occupations was not guaranteed in practice due to the ineffective application of the legislation. As to the question of young people employed as domestic staff, the Committee refers to its conclusion on Article 7§1.

The report states that young workers under 18 years old are not allowed to perform difficult, harmful or dangerous work.

According to Section 4 of the Government Decision No. 600/2006, the employer is obliged to provide young people the working conditions adapted to their age.

According to Section 6 of the same decision: the employer is obliged to take measures to ensure safety and health of young people, considering in particular the specific risks they may be exposed to. The assessment of the risks must be made before young workers begin work and at any significant change in working conditions and should address the following main elements:

- work equipment as well as workplace and workstation organization;
- nature, level and duration of exposure to physical, biological and chemical agents;
- organization, classification and use of work equipment, in particular the agents referred to above, machinery, apparatus and appliances, and their handling;
- establishing work procedures and work conduct and their interaction, respectively labour organization,
- level of training and education offered to young people.

If the assessment demonstrates a risk to health, safety or physical or mental development of young people, the employer is required to provide assessment and supervision of young workers' health at regular intervals, free of charge and appropriate, in accordance with existing regulations.

According to Section 7 the employer must inform in writing the young worker and the parents of legal representatives, about the potential risks and about all measures taken regarding their safety and health.

Section 9 stipulates that the employer is required to protect young people against specific risks to their safety, health and development, the risks arising from their lack of experience, insufficient awareness of existing or potential risks or the fact that young people are still under development and the employment of young workers is prohibited for activities that:

- clearly exceed their physical or psychological capacity;
- involve harmful exposure to toxic agents, carcinogens, which causes heritable genetic damage, being harmful to the foetus during pregnancy or having any chronic adverse effects on humans;
- involve harmful exposure to radiation;
- present risk of accidents, which it is assumed that the young people can not identify or prevent, because they give insufficient attention to safety at work, the lack of experience or training;
- put in danger their health due to extreme cold or heat or due to noise or vibration;
- work involving harmful exposure to the physical, biological and chemical agents referred to in section I of the Annex to the Decision;
- processes and activities referred to in section II of the Annex.

The Committee takes note of the list of types of work considered dangerous or unhealthy. The list includes among others physical, biological and chemical agents, as well as certain processes and activities that may lead to specific risks to young people's safety, health and development.

The Committee considers that the legislation governing types of work considered dangerous or unhealthy is in conformity with Article 7§2 of the Charter.

Parents or legal guardians of children found to allow the child or use the child to perform hazardous work are required to attend parenting programs or, where appropriate, advice from services under the Directorate General of Social Assistance and Child protection and in cases of failure to comply, may be fined by 100 to 1 000 lei (€ 23 to € 230). A person who uses children to perform dangerous work may be fined by 500 to 1 500 lei (€ 116 to € 350).

The Committee takes note of the activity of Labour Inspectorate in relation to employment of young workers in hazardous and unhealthy occupations. In 2008-2009 a control campaign was organized on occupational hazards to which workers belonging to particularly sensitive risk groups are exposed. The number of controlled units was 1,268 with a number of workers of 908,473, out of which 12,495 young workers aged between 15 and 18 worked during the day and 8 young workers aged between 15 and 18 carried out night work.

The report states that there have been cases of young people identified to carry on prohibited activities for which sanctions were applied. The Committee asks for statistics concerning the identified cases of violations and what measures are taken in those cases.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Romania is in conformity with Article 7§2 of the Charter.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 3 - Prohibition of employment of children subject to compulsory education*

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

Compulsory education in Romania continues up to the 10th grade which corresponds to the age of 16 or 17.

Both the Labour Code and GD No. 600/2007 prohibit employment under 15 years of age. The report states that there are no specific provisions for children under 15 and that a working group has been set up in order to regulate activities regarding, among others, light work, artistic, cultural and sport.

The Committee refers to its findings regarding employment of children under 15 and light work under Article 7§1.

Concerning the employment of young workers above 15 and subject to compulsory education the report does not indicate the maximum of the working hours allowed. The Committee asks that next report provide this information. The report states that between 2 working days, the young workers between 15 and 16, attending compulsory schooling benefit of a minimum rest period of 14 consecutive hours.

Since the report, again, fails to show that the rest period for children subject to compulsory education meet the requirements under Article 7§3, the Committee considers that the situation is not in conformity with the Charter.

The Committee notes the efforts of the Government to fight illegal employment of children subject to compulsory education. It takes note of the activity of the Labour Inspectorate and its findings. It notes however that the situation in practice continues to show that many children subject to compulsory education are involved in illegal employment or work that is not light. Consequently, it reiterates its conclusion of non-conformity in this respect.

As regards work during school holidays, the Committee refers to its interpretative statement on Article 7§3 in the General Introduction. It asks the next report to indicate whether the situation in Romania complies with the principles set out in this statement. In particular, it asks whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday. It also asks what are the rest periods during the other school holidays. Meanwhile it reserves its position on this point.

#### *Conclusion*

The Committee concludes that the situation in Romania is not in conformity with Article 7§3 of the Charter on the ground that the right of children to fully benefit from compulsory education is not guaranteed due to the ineffective application of the legislation.

### **Article 7 - Right of children and young persons to protection**

#### *Paragraph 4 - Working time for young persons under 18*

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

In its last conclusion, the Committee found the situation in Romania not to be in conformity with Article 7§4 of the Charter on the grounds that young people employed as domestic staff are not covered by labour legislation; and the right to restricted working hours, in accordance with their development needs, is not guaranteed in practice due to the ineffective application of the legislation. As to the question of young people employed as domestic staff, the Committee refers to its conclusion on Article 7§1.

The report states that in the case of young workers, the maximum working time is maximum 6 hours/day and 30 hours/week. In the situation in which the young worker has more than one employment contract, the total cumulative working time can not exceed the above-mentioned limit. Young workers are not allowed to perform overtime work.

Young workers benefit from a lunch break of at least 30 minutes if their daily working time is more than 4 and a half hours. Between 2 working days, the young workers are entitled to a minimum rest period of 12 uninterrupted hours.

The report also states that young workers benefit from a weekly rest period of 2 consecutive days, usually on Saturdays and Sundays.

The report states that during the reference period checks were conducted to verify compliance of employers with working arrangements for young workers (working hours, overtime, night work,

additional leave, etc.). The territorial labour inspectorates submitted 13 referrals to the bodies entitled to pursue criminal procedure for violations in relation to the law on working time for young workers.

The Committee takes note of the inspection activities and the violations found as described in the report. It asks what kind of sanctions are imposed in cases of violations.

#### *Conclusion*

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

### **Article 7 - Right of children and young persons to protection**

#### *Paragraph 5 - Fair pay*

The report submitted by Romania contains no information in relation to Article 7§5.

In its last conclusion, the Committee found the situation in Romania not to be in conformity with Article 7§5 of the Charter on the grounds that: young people employed as domestic staff were not covered by the labour legislation; and the right to young workers and apprentices to a fair wage or other appropriate allowances was not guaranteed in practice due to the ineffective application of the legislation.

The Committee observes that national legislation does not distinguish between domestic staff and other categories of workers, legal provisions and collective agreements applicable to them applies equally to domestic staff, so by default to young people.

The Committee recalls that, in application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices appropriate allowances. This right may result from statutory law, collective agreements or other means.

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

As to the apprentices, they may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period: starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end.

Having received no information by the Government to indicate that the situation has changed, the Committee renews its conclusion of non-conformity.

#### *Conclusion*

The Committee concludes that the situation in Romania is not in conformity with Article 7§5 of the Charter on the ground that the right to young workers and apprentices to a fair wage or other appropriate allowances is not guaranteed in practice due to the ineffective application of the legislation.

### **Article 7 - Right of children and young persons to protection**

#### *Paragraph 6 - Inclusion of time spent on vocational training in the normal working time*

The report submitted by Romania contains no information in relation to Article 7§6.

In its last conclusion, the Committee found the situation in Romania not to be in conformity with Article 7§6 of the Charter on the grounds that: young people employed as domestic staff were not

covered by labour legislation; the right to have time spent on vocational training considered to be working time and remunerated as such was not guaranteed in practice due to the ineffective application of the legislation.

The Committee observes that national legislation does not distinguish between domestic staff and other categories of workers, legal provisions and collective agreements applicable to them applies equally to domestic staff, so by default to young people.

The Committee recalls that, in application of Article 7§6, time spent on vocational training by young people during normal working hours must be treated as part of the working day. Such training must, in principle, be done with the employer's consent and be related to the young person's work. Training time must thus be remunerated as normal working time, and there must be no obligation to make up for the time spent in training, which would effectively increase the total number of hours worked.

This right also applies to training followed by young people with the consent of the employer and which is related to the work carried out, but which is not necessarily financed by the latter.

Having received no information in the report to indicate that the situation has changed, the Committee renews its conclusion of non-conformity.

#### *Conclusion*

The Committee concludes that the situation in Romania is not in conformity with Article 7§6 of the Charter on the ground that it has not been established that the right to have time spent on vocational training considered to be working time and remunerated as such is guaranteed in practice.

### **Article 7 - Right of children and young persons to protection**

#### *Paragraph 7 - Paid annual holidays*

The report submitted by Romania contains no information in relation to Article 7§7. It mentions that young workers are entitled to 3 additional days of holiday, in addition to the usual Saturdays and Sundays, but this information relates to working time and rest period and not to paid holiday.

In its last conclusion, the Committee found the situation in Romania not to be in conformity with Article 7§7 of the Charter on the grounds that young people employed as domestic staff are not covered by labour legislation and the right to paid annual leave is not guaranteed in practice due to the ineffective application of the legislation.

The report states that national legislation does not distinguish between domestic staff and other categories of workers, legal provisions and collective agreements applicable to them applies equally to domestic staff, so by default to young people.

The Committee recalls that, in application of Article 7§7, young persons under eighteen years of age must be given at least four weeks' annual holiday with pay. The arrangements which apply are the same as those applicable to annual paid leave for adults (Article 2§3). For example, employed persons of under 18 years of age should not have the option of giving-up their annual holiday with pay; in the event of illness or accident during the holidays, they must have the right to take the leave lost at some other time.

Having received no information by the Government to indicate that the situation has changed, the Committee renews its conclusion of non-conformity.

#### *Conclusion*

The Committee concludes that the situation in Romania is not in conformity with Article 7§7 of the Charter on the ground that it has not been established that the right to paid annual leave is guaranteed in practice.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 8 - Prohibition of night work*

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

The Committee recalls that, in application of Article 7§8, domestic law must provide that young workers under 18 year old are not employed in night work. Laws or regulations must not cover only industrial work. Exceptions can be made as regards certain occupations specified in national laws or regulations.

The report states that young workers up to 18 years can not be employed in night work. The young workers above 15 and 16, attending compulsory schooling can not perform work between 8 p.m. and 6 a.m..

The Committee asks whether there exist exceptions to prohibition of night work and, should this be the case, what is the content of these exceptions and how is the practical situation supervised.

In its last conclusion it asked what are the rules governing young workers professional formation and apprenticeship of which requires, at least partially, night work. The report does not contain any information in this regard. The Committee reiterates its question.

In its last conclusion, the Committee found the situation in Romania not to be in conformity with Article 7§8 of the Charter on the grounds that young people employed as domestic staff are not covered by labour legislation and the prohibition of night work for young persons is not guaranteed in practice due to the ineffective application of the legislation.

The report states that national legislation does not distinguish between domestic staff and other categories of workers, legal provisions and collective agreements applicable to them applies equally to domestic staff, so by default to young people.

The Committee takes note of the information regarding the activity of the Labour Inspectorate and the cases of violations identified.

### *Conclusion*

Pending receipt of the information requested the Committee concludes that the situation in Romania is in conformity with Article 7§8 of the Charter.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 9 - Regular medical examination*

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

Government Decision No. 355/2007 stipulates that all workers must undergo periodic medical examination at least once a year.

The decision establishes intervals of less than one year for periodic medical examination of workers exposed to chemical agents, physical agents, biological agents, workers in sectors at risk of transmitting infectious diseases directly or indirectly, for potable water supply activities and other public facilities as well as for other categories of workers.

According to Article 27§1 of the Labour Code, a person may be engaged in work only under a medical certificate, which establishes that the respective person is suitable for the said work. Article 28 specifies the cases when a medical certificate is required.

Article 124§1 of the Code stipulates that employees who perform night work must undergo a free medical examination when they begin night work and then periodically.

According to Article 182 of the Code, employers must provide employees access to occupational health care service.

Article 185 of the Code stipulates that the main tasks of occupational medicine physician are the following:

- prevention of occupational accidents and diseases,

- effective monitoring of hygiene and health,
- provide medical examination of employees both at employment and during the execution of the individual employment contract.

The Committee asks for the kind of examinations carried out and whether they take into account the specificities of the work. It also asks for information regarding the activity of Labour Inspectorate in relation to medical examination of young workers. It asks for the identified cases of violations and what sanctions are imposed in these cases.

#### *Conclusion*

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

### **Article 7 - Right of children and young persons to protection**

#### *Paragraph 10 - Special protection against physical and moral dangers*

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

#### ***Protection against sexual exploitation***

The Committee recalls that it examined the legislative framework protecting children from sexual exploitation in the previous conclusions (Conclusions 2004 and 2006). It asked whether the Romanian legislation criminalised the simple possession of child pornography.

The Committee notes several legislative initiatives aimed at strengthening the protection of children, including amendments of the Criminal Code and the adoption of the new Criminal Code which will enter into force in October 2011. In this respect, the Committee recalls that it does not take into consideration legislation adopted beyond the reference period (2005-2010) and invites the Government to submit the information in the next report.

The Committee notes from the report that the legislation in force in the relevant period prohibits possession of child pornography for the purpose of distribution, but it does not ban the simple possession. The simple possession of the child pornography is criminalised, regardless of the intention of distribution, only if it is stored in a computer system or on a computer data storage medium. The Committee considers that this is not in conformity with Article 7§10 of the Charter.

Previously, the Committee noted that the Government had taken measures to prevent trafficking in children, however it considered that the situation was not in conformity with the Charter on the ground that the number of children affected was too high, indicating that the measures adopted had not been fully effective. The Committee also asked for information on the results of the measures taken to reduce child sexual exploitation including the trafficking of minors.

The Committee takes note of the numerous efforts in the area of trafficking, among which the setting up of the National Agency against Trafficking in Persons (ANITP) in 2005 which is the coordinating body for all measures against trafficking in human beings in Romania. A comprehensive National Strategy against Trafficking in Persons for 2006-2010 was adopted in 2006, and in the same year Romania ratified the Council of Europe Convention on Action against Trafficking in Human Beings. Efforts to prevent human trafficking in Romania have focused on awareness-raising for both potential victims and the general public. ANITP has implemented several campaigns and projects in partnership with other stakeholders.

Nevertheless, the Committee notes from the 2009 Concluding Observations of the UN Committee on Rights of the Child that the number of sexually exploited children is high and the number of children trafficked from Romania to other European States has increased. According to the report, of the total victims of trafficking identified in 2007-2009, approximately 23% were minors. As indicated by the National Integrated System to Monitor and Assess Victims of Trafficking (SIMEV), the total number of identified victims in 2008 was 1240, a decrease from 1780 in 2007. Minors represented 17% of those trafficked. In 2009, the government identified 780 victims, including at least 416 identified victims of forced labour and at least 320 identified victims of forced prostitution, a significant decrease from 1,240 victims identified in 2008. Of those victims identified in 2009, 176 were children, trafficked for both forced labour and prostitution.

The Committee also notes from the European Commission National Info Pages concerning the Fight against Trafficking in Human Beings<sup>1</sup> that although Romania has been mainly a source and transit country of human trafficking for the purpose of sexual exploitation, in recent years Romania has gradually become a source and transit country for labour exploitation as well. Romanian children are mainly trafficked into begging and petty theft networks. Romanian children from the Roma community appear to fall victim to these rings of exploitation disproportionately. According to report of the organisation "Save the Children Romania", submitted for the UN Human Rights Council Universal Periodic Review (2008), although the Romanian Government has developed the institutional and legislative framework for preventing and combating child abuse and trafficking, implementation of these measures is slow.

The Committee considers that it has not been established that measures taken to combat trafficking and sexual exploitation of children are sufficient.

As regards data collection, the Committee further notes from the UN Special Rapporteur on the sale of children, child prostitution and child pornography (2005 report) that data on trafficking are not consistent as different institutions provide different data depending on the target group they focus on. Likewise, according to the EU Fundamental Rights Agency (FRA) Thematic Study on Child Trafficking –Romania (2009), there are limitations in gathering relevant statistical data, caused by poor interagency communication and gaps in data collection. Currently, data collected by law enforcement agencies refers to all trafficking cases, without making a distinction between adult and child victims. Similarly, the Committee observes from ECPAT International that no reliable data or statistics are available regarding cases of prostitution of children, and no information was obtained on how other specific forms of sexual exploitation of children, such as child pornography, manifest themselves in the country. The report does not provide any information in this regard.

The Committee recalls that the gathering and analysis of statistical data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of rational policy aiming at protection of particularly vulnerable groups or at reducing a particular phenomenon (see, *mutatis mutandis*, European Roma Rights Center (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23; ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27; Conclusions 2005, France, Article 31§2, p.268). Similarly, to effectively deal with trafficking in children, child abuse or to protect street children, States will need the necessary factual information on the extent and character of the problem in order to adopt the appropriate measures.

The Committee therefore asks how the Government monitors the scope of the problem of trafficking and sexual exploitation of children and requests the next report to provide the relevant data allowing the accurate assessment of the situation.

The Committee recalls that under Article 7§10, child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation. The Committee wishes to receive the Government's clarification whether and in what circumstances criminal liability can be imposed on a child under 18 years old for any act committed as a result of sexual exploitation or trafficking.

### ***Protection against the misuse of information technologies***

The Committee previously asked about measures taken to reduce the spread of sexual exploitation of children through new information technologies.

The Committee notes that according to Section 51(1) of Act No. 161/2003 the production for the purpose of distribution, offering or making available, distributing or transmitting, procuring for oneself or another of child pornography material through a computer system, or possession, without right, child pornography material in a computer system or computer data storage medium is a criminal offence and shall be punished with imprisonment from 3 to 12 years and denial of certain rights.

Romanian law also forbids the creation and administration of sites containing child pornography. The National Regulatory Authority on Communications and Information Technology can receive claims regarding the non-compliance with the above provision. When receiving such claims, the Authority requires the Internet service providers to block access to the site. The non-compliance of

Internet service providers with the obligation to block the site within 48 hours of receiving a request to that effect is subject to a fine ranging from 10,000 to 50,000 lei (approx. €2,419 to 12,099).

Awareness raising campaigns have been conducted by the Government in cooperation with NGOs.

### ***Protection from other forms of exploitation***

Previously, the Committee asked for information on the number of street children in Romania, and the impact of the programmes and other measures taken on the scope of the phenomenon.

The Committee notes from the report that programmes aimed at assisting and reintegrating street children continued over the reference period, including the project "Street Children Initiative", financed by a loan agreement with the Council of Europe Development Bank.

According to data collected by the General Directorates for Social Assistance and Child Protection through the Child Trafficking Information Monitoring System – CMTIS, on 31 March 2007 the number of street children was around 1,588 (this number including children who live in the street without their families; children who live with their families, but are daily on the streets to beg, wash windshields etc.; children who live with their families on the streets). Elsewhere in the report the Committee notes different statistical numbers of street children: 1,033 in 2007, 904 in 2008 and 824 in 2009.

However, according to ECPAT International (information dated 2008), there are at least 2,000 street children in Bucharest and 5,000 in the whole country. Most street children come from Roma families.

The Committee invites the Government to comment on the discrepancies in the above numbers. It also asks for information on the methods used for monitoring the number of street children as well as evaluation methods to assess the relevant campaigns' impact on the phenomenon.

### ***Conclusion***

The Committee concludes that the situation in Romania is not in conformity with Article 7§10 of the Charter on the grounds that:

- the simple possession of child pornography is not a criminal offence;
- it has not been established that measures taken to combat trafficking and sexual exploitation of children are sufficient.

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<sup>1</sup><http://ec.europa.eu/anti-trafficking/showNIPsection.action?sectionId=a9eb3934-22fa-4dc2-8977-40191d57e5bb>

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 1 - Maternity leave*

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

#### ***The right to maternity leave***

The Committee previously found that the situation as regards both maternity leave and maternity benefits was in conformity with Article 8§1 (Conclusions 2005). According to Government Emergency Ordinance No. 96 of 14 October 2003 on maternity protection at work, the length of maternity leave is 126 days, with 42 days of compulsory postnatal leave. The Committee asks whether the same regime applies to women employed in the public sector.

#### ***The right to maternity benefits***

The amount of maternity benefits is 85% of the average monthly wage of the female worker over the last 6 months.<sup>1</sup> The qualifying condition is to have contributed to the scheme 1 month over the last 12 months.<sup>2</sup> The Committee asks whether this also applies to women employed in the public sector, and asked for a full update to be provided in the next report.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Romania is in conformity with Article 8§1 of Charter.

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<sup>1</sup> International Social Security Association (ISSA): [http://www.issa.int/Observatory/Country-Profiles/Regions/Europe/Romania/Scheme-Description/\(id\)/103220](http://www.issa.int/Observatory/Country-Profiles/Regions/Europe/Romania/Scheme-Description/(id)/103220)

<sup>2</sup> ILO Database ILOLEX: <http://www.ilo.org/ilolex/english/newcountryframeE.htm>

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 2 - Illegality of dismissal*

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

#### ***Prohibition of dismissal***

As regards the prohibition of dismissal during pregnancy and maternity leave, the Committee previously found the situation was in conformity with Article 8§2 on this point (Conclusions 2003 and 2005). According to Article 60 of the Labour Code, dismissal of pregnant women having notified their pregnancy to their employer and women on maternity leave is forbidden except in cases of judicial reorganisation or bankruptcy of the employer. This protection is extended by Government Emergency Ordinance No. 96/2003 on maternity protection at work to women having recently given birth and breastfeeding for up to 6 months after the end of maternity leave (Section 21).

The Committee asks what regime applies to women employed in the public sector, in particular those with temporary contracts.

#### ***Consequences of unlawful dismissal***

The Committee previously found the situation to be in conformity with Article 8§2 on this point (Conclusions 2005) but sought information on the levels of compensation awarded in practice by the courts in these cases. It recalls that the level of compensation must be sufficient both to deter the employer and fully compensate the victim of dismissal. It thus reiterates its requests and underlines that should the next report not provide this information, there will be nothing to establish that the situation is in conformity.

The Committee asks what regime applies to women employed in the public sector, in particular those with temporary contracts.

#### *Conclusion*

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 3 - Time off for nursing mothers*

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

According to Government Emergency Ordinance No. 750 of 27/10/2003 on maternity protection at work, employed women are entitled to two one-hour breaks per working day for breastfeeding purposes, with no loss of salary. The employee concerned has to provide the employer with a medical certificate indicating the beginning of lactation and the presumed ending. The Committee asks for confirmation that the entitlement to those breaks lasts until the child is 9 months of age. It understands that the same regime applies to all employed women, including those working in the public sector.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Romania is in conformity with Article 8§3 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 4 - Regulation of night work*

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

The Committee previously found the situation to be in conformity with Article 8§4 (Conclusions 2003 and 2005). Article 125 of the Labour Code prohibits the employment for night work of pregnant women, women having recently given birth and women breastfeeding their child.

The Committee asks whether the same regime applies to women employed in the public sector.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Romania is in conformity with Article 8§4 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

The Committee found in its previous conclusion (Conclusions 2005) that the situation was in conformity with Article 8§5. The Government Emergency Ordinance on maternity protection at work provides that risk assessments should be regularly carried out and reassignment of women who are pregnant or breastfeeding is provided for, with no loss of pay. However, where the employer, for objectively justified reasons, cannot adapt the working conditions so as to remove risks or reassign the person to another post, the worker concerned will be entitled to a special "risk maternity benefit" which will represent 75% of her average salary over the last ten months preceding the request for the said benefit. The Committee asks how the notion of "objectively justified reasons" is construed in the case law of domestic courts.

The Committee asks whether the same regime applies to women employed in the public sector.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Romania is in conformity with Article 8§5 of the Charter.

## **Article 16 - Right of the family to social, legal and economic protection**

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

As the notion of the "family" is variable according to the different definitions in domestic law, the Committee considers it necessary to know how this notion is defined with a view to verifying that it is not unduly restrictive. The Committee therefore asks that the next report indicate how the "family" is defined in domestic law.

### ***Social protection of families***

#### ***Housing for families***

The Committee points out that Articles 16 and 31, though different in personal and material scope, partly overlap in several areas relating to the right of families to housing. In this respect, the notions of adequate housing and forced eviction are identical under Articles 16 and 31 (Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, § 115). As Romania has not accepted Article 31, housing for families is examined under Article 16.

The Committee has constantly interpreted the right to economic, legal and social protection of family life provided for in Article 16 as guaranteeing the right to adequate housing for families, which encompasses secure tenure supported by law (COHRE v. Croatia, Complaint 52/2008, decision on the merits of 22 June 2010, § 53).

According to the report, in Romania, Housing Act No. 114/1996 defines adequate housing and contains provisions for evictions and for building social housing, while Act No. 50/1991 regulates the authorisation of construction and demolition. Provisions on eviction of tenants are also included in the Romanian Civil Code. Act No. 116/2002 on preventing and combating social exclusion aims at facilitating an access to housing to persons aged up to 35 years. The report confirm that the Housing Act does not contain any discriminatory provisions, conditions or barriers. However, it should be noticed that the Section 43 of this law which enumerates categories of people who can benefit from social housing mentions men aged up to 35 years and remains silent regarding women. The Committee asks therefore that the next report provides information whether the Housing Act applies to young women as well.

The Committee notes that the Government undertook certain measures to implement the legal framework on housing. In particular, according to the report, it engaged in a programme for financing of social housing under the provisions of Act No. 114/1996 with the objective to achieve decent living conditions for the underprivileged sections of the population and young people. The programme is implemented under the responsibility of the Ministry of Regional Development and Tourism. During 2005-2009, 2 198 residential units were completed. It was planned to build further 578 dwelling units in 2010 with a state budget of 28 250 000 lei (RON). In addition, according to Emergency Ordinance No. 74/2007, the Ministry engaged in a programme for financing the construction of social housing for tenants evicted from their homes returned to former owners. Over 1 965 residential units have been completed since 2007 within the framework of this programme. Also, 14 500 housing were made between 2005 and 2009 as part of the housing program for youth.

Under Article 16, States Parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and size considering the composition of the family in question, and include essential services (such as heating and electricity). Furthermore, the obligation to promote and provide housing extends to ensuring enjoyment of security of tenure, which is necessary to ensure the meaningful enjoyment of family life in a stable environment. The Committee recalls that this obligation extends to ensuring protection against unlawful eviction (European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 24).

The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial legal and non-legal remedies. Any appeal procedure must be effective (Conclusions 2003 France, Italy

Slovenia and Sweden; Conclusions 2005 Lithuania and Norway; European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 80-81). Public authorities must also guard against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France). In this context, the Committee notes that according to sources in the European Union 42.5% of the population of Romania had no indoor toilet and 41.2% had no bath or shower while the average figures for the 27 members of the European Union were respectively 3.5% and 3.1% according to Eurostat data for 2009.

The Committee notes efforts undertaken by the Government to satisfy the right to an adequate housing for families in Romania, in particular for the young people and those evicted from their homes returned to former owners. However, it asks for more detailed information as regards the needs of families for housing and the availability of housing with an adequate standard in order to assess whether the situation is in conformity on this point.

As to protection against unlawful eviction, States must set up procedures to limit the risk of eviction (Conclusions 2005, Lithuania, Norway, Slovenia and Sweden). The Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction.

To enable it to assess whether the situation is in conformity with Article 16 of the Charter as regards access to adequate housing for the families, the Committee asks for information in the next report on all the aforementioned points.

As regards access to housing for vulnerable families and Roma in particular, the Committee has held that "as a result of their history, the Roma have become a specific type of disadvantaged group and vulnerable minority. They therefore require special protection. Special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve cultural diversity of value to the whole community" (COHRE v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40).

In its previous conclusion (Conclusions 2006), the Committee asked for detailed, up-to-date information on the results achieved by the Government in its fight against ethnic discrimination, particularly against Roma, and in improving their living conditions.

The report lists several measures taken by the Government to improve the situation of Roma. In particular, the National Agency for the Roma, established in October 2004 as an independent agency of the government, is responsible for coordinating Romania's involvement in the "Decade for the Inclusion of the Roma", a regional cooperation agreement between eight countries in Central and South East Europe to improve the social and economic conditions of Roma people. Launched in February 2005, the Decade has to narrow the gap between the Roma and the rest of the population in various areas including housing, in conformity with the Strategy for improving Roma situation adopted by the government of Romania in 2001. As from 2009, a pilot programme "Social dwellings for Roma communities" was launched within the framework of the Strategy with the aim of building 300 social housing for the Roma people. To implement the Strategy, the government allocated €1,3 million in 2005. Also PHARE and UNDP programmes contributed to its implementation. According to the report, one project related to housing (rebuilding of 20 houses) was selected in 2005. In 2007, the Parliament ratified the loan agreement with International Bank for Reconstruction and Development (IBRD) amounting € 47,2 million to finance Social Inclusion Programme during 2007 - 2011. The objective of this programme was to improve the living conditions and the social inclusion of the most disadvantaged/vulnerable people (Roma, persons with disabilities, children at risk, and victims of domestic violence) in the country. It should be noted that Information on actual achievements during the reference period is not provided in the report.

In its third report, adopted on 24 June 2005 (§ 146), the European Commission against Racism and Intolerance (ECRI), noted "that some members of the Roma minority continue to live in insalubrious housing, often as a result of discriminatory measures by local authorities. Furthermore, some local authorities still evict Roma from their housing without observing the legal procedure for the purpose. ECRI has also received reports of Roma being expelled from municipal sites in the middle of winter, in the presence of the media"<sup>1</sup>.

According to the report under the Framework Convention for the Protection of National Minorities (2nd opinion on Romania, adopted on 24 November 2005, § 55), the housing situation of many Roma is still very difficult on the whole and a cause for grave concern. The opinion specifies that "in certain cases, the solutions opted for by the local authorities to deal with these difficulties - eviction measures followed by inappropriate rehousing solutions - only make matters worse for the people concerned"<sup>2</sup>.

More recently, in its report published on 23 June 2011 "Mind the legal gap - Roma and the right to housing in Romania"<sup>3</sup>, Amnesty International points out that in Romania the right to housing for Roma families is not effectively recognised or protected by national legislation. In particular, domestic law does not protect the Roma people from forced evictions, even though these are illegal according to international standards binding upon Romania. Amnesty International and other NGOs have documented a series of cases where Roma communities had been forcibly evicted and resettled in a way that created or entrenched segregation. This report highlighted the need for the adoption of an adequate legal framework incorporating international human rights standards into Romanian housing legislation. It demonstrated that the lack of such a legal framework, combined with existing discrimination against Roma, has led to widespread violations of the right to housing, including forced evictions, and resettlement of families and communities in conditions that fall far below international standards. It described how local authorities that have competence to make decisions on and implement local housing policies, are not held accountable for serious human rights violations and how some of the most vulnerable citizens of Romania have limited or no access to justice and appropriate remedies.

The Committee asks that the next report provide information on measures taken in law and practice to improve the housing situation of Roma families. Meanwhile, it considers that it has not been established that the living conditions of Roma families in housing are effectively improved and guaranteed and the situation is therefore not in conformity with Article 16.

#### ***Childcare facilities***

The Committee observes that states must ensure that affordable, good quality childcare facilities are available to its citizens (where quality is defined in terms of the number of children under the age of six covered, staff to child ratios, staff qualifications, suitability of the premises and the size of the financial contribution parents are asked to make). As the report does not provide any information on this issue, the Committee is not able to assess whether the situation is in conformity on this point. The Committee reiterates its request (see Conclusions 2004 and 2006) for information in the next report on childcare facilities. It recalls that should the required information not be provided in the next report there will be nothing to show that the situation in Romania is in conformity with Article 16 of the Charter.

#### ***Family counselling services***

Families must be able to consult appropriate social services, particularly when they are in difficulty. States are required in particular to set up family counselling services and services providing psychological support for children's education. The Committee reiterates its request (see Conclusions 2006) for information in the next report on family counselling services.

#### ***Participation of associations representing families***

To ensure that families' views are catered for when family policies are framed, the authorities must consult associations representing families. The Committee asks for information in the next report on the participation of relevant associations representing families in the framing of family policies.

## ***Legal protection of families***

### ***Rights and obligations of spouses***

Under Article 48 of the Romanian Constitution, the family is founded on the freely consented marriage of the spouses, their full equality, as well as the right and duty of the parents to ensure the upbringing, education and instruction of their children. The Civil Code of Romania in its Article 258 § 3 specifies that the state is bound to support through economic and social measures the making of marriage and the development and consolidation of the family.

In cases of irreparable deterioration in family relations, Article 16 of the Charter requires the provision of legal arrangements to settle marital conflicts and in particular conflicts pertaining to children (care and maintenance, deprivation and limitation of parental rights, custody and access to children when the family breaks up). The Committee asks for the next report to provide detailed information on the aforementioned points.

### ***Mediation services***

The Committee points out that states are required to set up family mediation services. It asks for information in the next report on access to such services, whether they are free of charge, how they are distributed across the country and how effective they are.

### ***Domestic violence against women***

The Committee recalls that Article 16 requires that there exists protection for women, both in law (through appropriate measures and punishments for perpetrators, including restraining orders, fair compensation for the pecuniary and non-pecuniary damage sustained by victims, the possibility for victims – and associations acting on their behalf – to take their cases to court and special arrangements for the examination of victims in court) and in practice (through the collection and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and support and rehabilitate victims). In spite of the request made by the Committee (Conclusions 2006), the report contained no specific information on the implementation of the relevant legislation or on the extent of domestic violence in Romania. The Committee reiterates its request for the next report to provide a comprehensive description of the measures taken to combat domestic violence against women (measures in law and practice, data, judicial decisions). It recalls that should the required information not be provided in the next report there will be nothing to show that the situation in Romania is in conformity with Article 16 of the Charter.

## ***Economic protection of families***

### ***Family benefits***

The Committee considers that, in order to comply with Article 16, child allowances must constitute an adequate income supplement, which is the case when they represent a significant percentage of median equivalised income.

In its previous conclusion (Conclusions 2006), the Committee was unable to conclude that child benefits in Romania represented an adequate income supplement and it reiterated its conclusion of non-conformity.

According to the report, the State Allowance for Children is universal and allocated to children under the age of 18 years (or maximum secondary or post-secondary graduation age), with domicile or residence in Romania and living with their parents. The monthly amount of the State Allowance for Children in 2009 was of RON 200 (€ 47) for children up to two years of age (three years of age in case of disabled children) and RON 42 (€ 9.94) for children over two years of age (RON 84 (€ 19.80) for children aged between 3 and 18 years in case of disabled children). A Complementary Family Allowance is allocated to families living with children in maintenance of school age attending a form of education, if family member net income threshold is RON 470 (€ 111). The monthly amount differs according to the number of children within the family: RON 50 (€ 12) for a family with 1 child, RON 60 (€ 14) for a family with 2 children, RON 65 (€ 15) for a family with 3 children, RON 70 (€ 17) for a family with 4 or more children. For families entitled to Social Aid in accordance with the Law No. 416/2001 regarding the minimum guaranteed income, the Complementary Family Allowance is increased by 25%.

The Committee also notes that there are additional forms of financial assistance such as birth grants, newborns trousseau, crèche tickets, tax allowances, child-raising and fostering allowances, single-parent family allowances and financial support to the first marriage.

According to Eurostat data for 2009, the value of median equivalised monthly income was € 180.13. Bearing in mind that the child allowances was of € 9.94 for children over two years of age, they represented approximately 5.51% of the said income.

The Committee noted that the amount of child allowances has increased since the last assessment of the situation in relation to family benefits. It asks that the next report contain detailed information on the impact of other types of benefits and tax relief for families. Meanwhile, it reserves its position on this point.

### ***Vulnerable families***

States' positive obligations under Article 16 include implementing means to ensure the economic protection of various categories of vulnerable families, including Roma families. In its previous conclusion (Conclusions 2006), the Committee noted that the situation of Roma where legal protection is concerned has improved and requests information on the effects of these improvements with regard to access to family benefits. The Committee reiterates its request for the next report to provide relevant information on the subject matter.

### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

The report does not indicate how the foreigners and stateless persons permanently residing in the territory are eligible for family benefits. The Committee asks what are the conditions related to the acquisition of permanent resident status and how those affected receive family allowances.

### ***Conclusion***

The Committee concludes that the situation in Romania is not in conformity with Article 16 of the Charter on the ground that the living conditions of Roma families in housing are not adequate.

<sup>1</sup>[http://hudoc.ecri.coe.int/XML/Ecri/ENGLISH/Cycle\\_03/03\\_CbC\\_eng/ROM-CbC-III-2006-3-ENG.pdf](http://hudoc.ecri.coe.int/XML/Ecri/ENGLISH/Cycle_03/03_CbC_eng/ROM-CbC-III-2006-3-ENG.pdf)

<sup>2</sup>[http://www.coe.int/t/dghl/monitoring/minorities/3\\_fcnmdocs/PDF\\_2nd\\_OP\\_Romania\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_2nd_OP_Romania_en.pdf)

<sup>3</sup><http://www.amnesty.org/en/library/info/EUR39/004/2011/en>

## **Article 17 - Right of children and young persons to social, legal and economic protection**

### *Paragraph 1 - Assistance, education and training*

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

#### ***Status of the child***

The Committee takes note of the information on the existing legislative framework as concerns adoption of children. The Committee asks whether there are circumstances under which the child would not be allowed to know his/her origins and what is the nature of such restrictions.

#### ***Education***

As regards the right to accessible and effective education, the Committee refers to its conclusion under Article 17§2.

#### ***Protection from ill-treatment and abuse***

In its previous conclusion (Conclusions 2005) the Committee held that the situation was not in conformity with the Charter as corporal punishment within the family was not prohibited. It now notes from the report of the Governmental Committee of the Social Charter to the Committee of Ministers (TS-G (2005) 25) that new legislation was enacted to prevent and combat domestic violence. It notes from another source<sup>1</sup> that corporal punishment is now prohibited in the home. Section 28 of Act No. 272/2004 on the Protection and Promotion of the Rights of the Child, promulgated through Decree No. 481/2004 (in force in 2005), provides that a child has the right to be shown respect for his or her personality and individuality and may not be made subject to physical punishment or to other humiliating or degrading treatment. Besides, disciplinary measures concerning the child can only be taken in accordance with the child's dignity, and under no circumstances are physical punishments allowed, or punishments which relate to the child's physical and mental development or which may affect the child's emotional status.

The Committee notes that the situation has thus been brought into conformity.

#### ***Children in public care***

In reply to the question asked in the previous conclusion the report states that the reform of the childcare system has led to the closure of about 300 old-type residential institutions and the creation of alternative protective services. In addition, services have been developed to prevent separation of children from their parents. As a result, during 2005-2009 the number of institutionalised children has decreased from 23,684 to 19, 525. At the end of 2009 there were 1,217 residential public services which included traditional or modulated foster care centres, apartments, family type houses, emergency reception centres etc.

The Committee notes that the beneficiaries of residential services are children temporarily or permanently separated from their parents, children under emergency placement, children unaccompanied by parents or a legal guardian etc. Access is based on placement measures, under the law, by the Child Protection Commission or the court. When such a measure is decided by the court, the possibility for parents to exercise or not the parental rights and obligations is at the discretion of the court.

The Committee notes that according to another source<sup>2</sup> there is no harmonized set of standards to guide the decision on placing a child in out-of-family care, as well as its follow up and review. There is no unified protocol to guide the planning and monitoring of the intervention, including the assessment of the child's individual needs. According to the UN CRC there is no monitoring and evaluation of the quality and care provided, nor a mechanism through which children and their families can submit complaints. The Committee asks the Government to react to these statements and in particular, to state whether there is an adequate supervision of the child welfare system and a procedure for complaining about the care and treatment in institutions. In the meantime the Committee reserves its position on this point.

The Committee recalls (Conclusions XV-2, Statement of Interpretation on Article 17§1, p.29) that any restriction or limitation of parents custodial rights should be based on criteria laid down in legislation, and should not go beyond what is necessary for the protection and best interest of the

child and the rehabilitation of the family. The Committee has held that it should only be possible to take a child into custody in order to be placed outside his/her home if such a measure is based on adequate and reasonable criteria laid down in legislation. The Committee asks what are the criteria for the restriction of custody or parental rights and what is the extent of such restrictions. It also asks what are the procedural safeguards to ensure that children are removed from their families only in exceptional circumstances. It further asks whether the national law provides for a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family.

### ***Young offenders***

In its previous conclusion the Committee asked whether imprisonment was imposed more often than educational measures and if so, what was the justification. It asked for details on the types of training courses available and the percentage of teacher/student in the reform centres. In this respect it notes from the report that there are three rehabilitation centres where the teacher/child ratio is 1 to 4. All juveniles detained in rehabilitation centres attend school. According to the report, in 2010 there were 466 juvenile detainees in rehabilitation centres, juvenile prisons and other detention facilities. In reply to the Committee's question, the report states that the isolation penalty cannot be applied to juveniles in prisons. As regards the rehabilitation centres, juveniles may be isolated for disciplinary violations for a maximum period of up to 10 days only if they have finished school and professional training.

According to the report, by virtue of Article 160h, paragraphs 2-4 of the Criminal Procedure Code the pre-trial detention of a minor may be at most 15 days . Extension of this measure may be ordered only in exceptional circumstances and the preventive arrest of a juvenile during prosecution may not exceed, in total, 60 days. Te Committee asks what is the maximum length of a prison sentence for young offenders.

The Committee notes from another source<sup>3</sup> that **Error! Hyperlink reference not valid.** here are very few rehabilitation centres and penitentiaries for children in conflict with the law, and there are no measures for or institutions charged with assisting such children with re-integration in the society; besides, children deprived of liberty have seldom access to appropriate education services, while there are no provisions for education of children in pre-trial detention. Besides, according to the UN CRC the legislation regulating the activity of re-education centres (Decree No. 545/1972) has been considered by the Ombudsman to be obsolete and no longer adequate to ensure the child's best interests, and the child's physical, psychological, medical, and educational development. The Committee asks the next report to provide comments on these statements. In the meantime it reserves its position on this point.

The Committee asks whether minors can be imprisoned together with adults. It also asks whether young offenders serving a prison sentence have a statutory right to education.

### ***Conclusion***

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

<sup>1</sup> <http://www.endcorporalpunishment.org/pages/frame.html>

<sup>2</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/433/03/PDF/G0943303.pdf?OpenElement#>

<sup>3</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/433/03/PDF/G0943303.pdf?OpenElement#>

## **Article 17 - Right of children and young persons to social, legal and economic protection**

### ***Paragraph 2 - Free primary and secondary education - regular attendance at school***

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

In its previous conclusion (Conclusions 2005) on Article 17§1 the Committee held that the level of non-attendance in compulsory schooling was manifestly high. It asked what measures were taken to prevent the phenomenon of non-attendance.

The Committee takes note of the measures taken to improve school attendance in rural areas as well as enrolment and attendance for vulnerable groups, such as Roma children.

It notes in particular that to help overcome obstacles such as poor road infrastructure and distance from home to school in rural areas the Ministry of Education, Research Youth and Sports (MECTS) provides school buses as well as accommodation and food in the boarding schools. MECTS also took measures to reduce school drop out and support the participation of students through reimbursement of travel expenses, providing free school supplies for students from poor families (in 2009 there were 767,894 beneficiaries), financial assistance to students from disadvantaged families to complete their studies in high schools, the Government scholarships to gifted students, which cover the costs of accommodation in a boarding school and the costs of school supplies. 329 students were awarded this scholarship in 2009.

The Committee notes from the report that the enrolment rate in primary education in 2007-2008 amounted to 97,8% in total and 94,1% in rural areas, while that in gymnasium to 100,5% and 92,5% respectively. It notes from another source<sup>1</sup> that in 2005-2009 gross secondary school enrolment rate stood at 92% in males and 91% in females. As regards the drop-out rate, according to the report (National Institute of Statistics) it amounted to 1,9% in 2008-2009. The Committee asks what measures are taken to increase enrolment rate in secondary education.

In its previous conclusion the Committee wished to be informed about the results of programmes designed to improve schooling prospects for Roma children. In this connection it notes from the report that to support school attendance of Roma pupils it was decided to include them in the education system since the pre-school cycle. Summer kindergarten was organised for Roma children who never attend pre-school classes, Romani language was introduced in schools and additional places were allocated to secondary and tertiary schools to include Roma children. In the framework of the PHARE programme on access to education for disadvantaged groups teachers and school principals were trained, new curriculum was developed which includes subjects related to Roma culture and traditions. 36 resource centres were set up for inclusive education. Besides, education materials relevant for this target group were prepared. The Committee also takes note of various measures implemented in the context of Decade of Roma Inclusion (2005-2015) through the Government Strategy GD 522/2006 which aimed at, among others, preservation and integration of the Romani language and culture, teaching of the mother tongue Romani through a bilingual approach (Romani-Romanian). In 2005-2009 440 teachers ensured teaching of the Romani language and history.

The Committee notes from another source<sup>2</sup> that despite measures taken, including the training and recruitment of school mediators, Roma children continue to have a significantly lower pre-school and primary school enrolment rate, many experience some form of school segregation and have lower school attendance rates. The Committee asks the Government to provide comments on these statements as well as enrolment and drop-out rates of Roma children in compulsory education.

As regards the integration of children with disabilities into mainstream education the Committee refers to its conclusion under Article 15.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Romania is in conformity with Article 17§2 of the Charter.

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<sup>1</sup>[http://www.unicef.org/infobycountry/romania\\_statistics.html](http://www.unicef.org/infobycountry/romania_statistics.html)

<sup>2</sup><http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/433/03/PDF/G0943303.pdf?OpenElement#>

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 7 - Equality regarding legal proceedings*

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

The previous conclusion found that the situation was in conformity with the Charter, the Committee previously noted that access to courts and the possibility of bringing an action in justice was ensured under domestic law to all persons, irrespective of their nationality or domicile. It also noted that free legal assistance was ensured to “persons who are not able to cover the costs of a trial without undermining their own support or that of their family”. The Committee asked whether the provisions which ensured equality of treatment in respect of legal proceedings, extended to all the matters covered by Article 19 (i.e. pay, working conditions, housing etc.). This information has not been provided.

Further the current report states that for civil procedures the right to free legal assistance “to persons who are unable to cover the costs of a trial, without undermining their support or that of their family was repealed from the Code of Civil Procedure by EOG no 51/2008. No information is provided on how following this repeal legal assistance is guaranteed to migrant workers on a basis of equality with nationals. The Committee refers to its interpretative statement in the General Introduction and requests the next report to state whether domestic legislation makes provision for migrant workers who are involved in legal or administrative proceedings and who do not have counsel of their own choosing to be advised to appoint counsel and, whenever the interests of justice so require, be provided with counsel, free of charge if they do not have sufficient means to pay the latter, and whether migrant workers may have the free assistance of an interpreter if they cannot properly understand or speak the language used in the proceedings and have any necessary documents translated. Such legal assistance should be extended to obligatory pre-trial hearings.

### *Conclusion*

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

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 8 - Guarantees concerning deportation*

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

The Committee recalls that the Romanian Constitution establishes the obligation that expulsion or extradition orders are to be made by courts.

The Committee previously asked for indications as to what circumstances were taken into consideration when deciding on the expulsion of a migrant worker convicted of a criminal offence.

The report again states that according to Government Emergency Ordinance no.194/2002 on Foreigner's status in Romania and the Criminal Code, expulsion is a security measure and can be taken if a foreigner has committed a crime in Romania .

The Committee previously noted (Conclusions 2004 and 2006) that foreigners may also be expelled for reasons relating to public order and national security.

The Committee refers to its interpretative statement in the General Introduction and asks the next report to provide information on all the issues raised in it, as well as precise information on what types of criminal offences may lead to a migrant worker being expelled. It further asks for information on rights of appeal against expulsion orders as well as information on the rights of family members to remain in the territory.

### *Conclusion*

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

## **Article 27 - Right of workers with family responsibilities to equal opportunity and treatment**

### *Paragraph 2 - Parental leave*

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

The Committee recalls that the focus of Article 27§2 are parental leave arrangements which are distinct from maternity leave and come into play after the latter. National regulations related to maternity or paternity leave fall under the scope of Article 8§1 and are examined under that provision.

The Committee also recalls that Article 27§2 requires States to provide the possibility for either parent to obtain parental leave. Consultations between social partners throughout Europe show that an important element for the reconciliation of professional, private and family life are parental leave arrangements for taking care of a child. Whilst recognising that the duration and conditions of parental leave should be determined by States Parties, the Committee considers important that national regulations should entitle men and women to an *individual right* to parental leave on the grounds of the birth or adoption of a child. With a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided on a non-transferable basis to each parent.

The relevant legislation on parental leave for the reference period was Government Emergency Ordinance (OUG) No. 148/2005 and its application norms. Under these regulations, persons who in the year prior to the birth of the child obtained income -and paid income tax- during those 12 months, have the right to take leave to take care of a child under the age of two years (or three years in the case of a disabled child).

The report states that the leave can be taken by the biological or adoptive parents, as well as the person appointed as guardian, provided they are Romanian citizens (or foreign citizens), are domiciled or resident in the country and live with the child. The Committee understands that foreign nationals are entitled to take parental leave on the same conditions as nationals, and asks the next report to confirm if this interpretation is correct.

The report states that a monthly allowance is paid during parental leave, in the amount of 600 lei (€ 139), or optionally, of an amount representing 85% of the average income during the last 12 months but not more than 4,000 lei (€ 926). The Committee asks for how long this allowance is paid. It recalls in this respect that remuneration of parental leave (be it continuation of pay or via social assistance/social security benefits) plays a vital role in the take up of childcare leave, in particular for fathers or lone parents.

The report indicates that that rules on parental leave apply without distinction to women and men, regardless of their occupational category.

The Committee asks if at the end of the parental leave workers have the right to return to the same job.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Romania is in conformity with Article 27§2 of the Revised Charter.