



European  
Social  
Charter

Charte  
Sociale  
Européenne



COUNCIL  
OF EUROPE

CONSEIL  
DE L'EUROPE

January 2013

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

European Committee of Social Rights

Conclusions 2012

(THE REPUBLIC OF MOLDOVA)

Articles 1, 9, 10, 15, 18, 20, 24 and 25  
of the Revised Charter

*This text may be subject to editorial revision.*



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

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 European Social Charter (revised) was ratified by the Republic of Moldova on 8 November 2001. The time limit for submitting the 8th report on the application of this treaty to the Council of Europe was 31 October 2011 and the Republic of Moldova submitted it on 23 March 2012. On 14 June 2012, a letter was addressed to the Government requesting supplementary information regarding Article 1§2. The Government submitted its reply on 26 July 2012.*

This report concerned the accepted provisions of the following articles belonging to the thematic group " Employment, training and equal opportunities ":

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

The Republic of Moldova has accepted articles 1, 9, 15§§1-2, 18§§3-4, 20 and 24 from this group.

The reference period was 1 January 2007 to 31 December 2010.

The present chapter on Moldova concerns 11 situations and contains:

- 2 conclusions of conformity: Articles 1§3 and 18§4;
- 8 conclusions of non-conformity: Articles 1§§1, 2, 4; 9; 15§§1, 2; 18§3; 20.

In respect of the other situation concerning Article 24, 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 report from Moldova deals with the accepted provisions of the following articles belonging to the second thematic group "Health, social security and social protection":

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),

- the right of elderly persons to social protection (Article 23),
- the right to protection against poverty and social exclusion (Article 30).
- the deadline for the report was 31 October 2012.

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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 1 - Right to work**

### *Paragraph 1 - Policy of full employment*

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

### ***Employment situation***

The Committee notes from the report that GDP growth rate in the Republic of Moldova grew from 3% in 2007 to 6.5% in 2010 (despite a contraction of 7.2% in 2008).

The National Bureau of Statistics of the Republic of Moldova shows that the employment rate decreased from 42.5% in 2007 to 38.5% in 2010, which is by international comparison an extremely low rate.

The same source indicates that the unemployment rate increased from 5.1% (2007) to 7.4% (2010). Youth unemployment also increased during the reference period, from 20.3% in 2007 to 25.6% in 2010, as did the long-term unemployment rate (persons unemployed 12-23 months), from 9.8% to 16.5%.

The Committee considers that the situation in the Republic of Moldova is not positive: despite a relative growth of the economy, the employment rate has decreased during the reference period. In addition, unemployment levels increased, namely as regards young people.

### ***Employment policy***

The report states that the aim of the National Strategy on employment policies for the period 2007-2015 is to ensure the highest level of employment, sustainable and productive labor, and achieving a decent level of remuneration for work.

Labour market measures are contained in Law No. 102-XV on employment and social protection of persons seeking a job. The active measures mentioned in this law are: mediation services; information and career counseling; orientation and training; public works; stimulating labor mobility; encouraging employers to hire; and financial support to employers creating new jobs. The report mentions that the lack of financial resources has prevented implementing all these active measures.

The Committee notes the number of persons that participated in the different active measures that were available during the reference period. It also notes that the average time between registration as unemployed and being offered participation in an active measure decreased from 49 days in 2007, to 43 days in 2010. The Committee asks the next report to also provide the overall activation rate, i.e. the average number of participants in active measures as a percentage of total unemployed.

According to the report, public expenditure on active labour market policies amounted to 0.02% of GDP in 2010, which is by international comparison very low.

Finally, the Committee recalls that labour market measures should be targeted, effective and regularly monitored. It asks the next report to indicate whether employment policies are monitored and how their effectiveness is evaluated.

### ***Conclusion***

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

## **Article 1 - Right to work**

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

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

#### **1. Prohibition of discrimination in employment**

The Committee previously asked the Government a significant number of questions on the elimination of all forms of discrimination in employment and on other aspects of a worker's right to earn his living in an occupation freely entered upon. The report fails to answer these question either adequately or at all.

The Committee notes for instance that there is no specific reference in the legislation to discrimination on the ground of age. According to the report, this aspect is covered, nonetheless, by the general clauses prohibiting discrimination. Since, however, the report does not present any court decisions making it possible to confirm this interpretation, there is nothing to show that discrimination on the ground of age is really prohibited. It is also stated in the report that a bill on preventing and combating discrimination was rejected by parliament because, for the first time, sexual orientation had been referred to specifically in the list of prohibited grounds for discrimination. The Committee infers from this that discrimination on the ground of sexual orientation is not prohibited in the Republic of Moldova.

Lastly, civil service jobs are reserved for the Republic of Moldovan nationals and this is an excessively broad restriction, which is not covered by Article G of the Charter, as the only jobs from which nationals of other States Parties can be barred are those that are inherently connected with the protection of law and order or national security or involve the exercise of public authority.

In reply to the Committee's question concerning the interpretation of indirect discrimination, the report states that, under Article 2 of Law No. 5-XVI of 9 February 2006 on equal opportunities for women and men, indirect discrimination on the ground of sex is the result of any identical act, rule or practice for women and men producing a different effect or result for one of the sexes. The Committee asks whether this interpretation also applies to the other forms of indirect discrimination prohibited by Article 8 of the Labour Code.

The report states that no upper limit can be placed on the amount of compensation that may be awarded for discrimination.

#### ***Prohibition of Forced labour***

Article 7 of the Labour Code places a general ban on forced labour, except for persons performing military service, non-military national service, prison labour, work in the context of natural disasters or work forming part of ordinary civic duties. The Committee considers that the last of these exceptions to the general prohibition of forced labour is too wide and without further information on how it is to be interpreted, not in conformity with the Charter.

#### ***Prison work***

The Committee takes note of the information in the report. The rules on prison work are contained mostly in the Law on the prison system (Law No. 1036 of 17 December 1996) and the regulations on the enforcement of sentences (Government Decision No. 583 of 26 May 2006). Convicted prisoners may work for private companies (but cannot be forced to do so), and in workshops both inside and outside prisons on the basis of contracts negotiated with these companies by the prison authorities. Such work is covered by the labour legislation on

working hours and health and safety . As such work is remunerated in accordance with labour legislation; pay cannot be lower than the minimum wage. Prisoners may forward all or some of their wages to relatives. Six months' work entitles prisoners to 12 days of unpaid leave, which may be taken outside the prison if it is an open prison. Convicted prisoners may also be required to perform unpaid work for the upkeep or alteration of prison premises and the improvement of living conditions and health and sanitary conditions. Such activities must be limited to two hours a day and ten hours a week. About one third of prisoners capable of working have a job, but this proportion decreased over the reference period (from 34.2% in 2007 to 27% in 2010). For other matters relating to prison work not dealt with above, the Committee refers to its statement of interpretation and to its questions in the General Introduction.

### ***Coercion in connection with domestic work***

The Committee refers to its statement of interpretation and question in the General Introduction in this respect.

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

The Committee considers that in general, the conditions to which the payment of unemployment benefits is subject, including any obligations to take up proposed employment, should be assessed under Article 12§1 of the Charter (or Article 12§3 in the case of new developments). However, in certain cases and under certain circumstances the loss of unemployment benefits on grounds of refusal to accept proposed employment could amount, indirectly, to a restriction on the freedom to work and as such the situation would be assessed under Article 1§2 (see General Introduction to Conclusions 2008).

The Committee refers to its statement of interpretation in the General Introduction. It asks that the next report include updated information on this issue.

### ***Service required to replace military service***

The Committee notes that Law No. 156-XVI on the organisation of (alternative) civil service, which brought the length of non-military national service into line with that of military service (12 months), came into force on 7 September 2007. The Committee considers that this reform brings the situation in the Republic of Moldova into conformity with Article 1§2 in this respect.

### ***Minimum periods of service in the armed forces***

The Committee notes the information submitted on minimum periods of service in the professional armed forces. It highlights that any minimum period must be of a reasonable duration and in cases of longer minimum periods due to education or training that an individual has benefitted from, the length must be proportionate to the duration of the education and training. Likewise any fees/costs to be repaid on early termination of service must be proportionate.

### ***Privacy at work***

The Committee notes that Chapter VI of Part III of the Labour Code regulates the protection of employees' personal data. For other matters relating to respect for workers' private lives, the Committee refers to its statement of interpretation and to its questions in the General Introduction.

### *Conclusion*

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 1§2 of the Charter on the grounds that:

- It has not been established that discrimination on the ground of age is prohibited;
- discrimination on the ground of sexual orientation is not prohibited;
- nationals of other States Parties do not have access to civil service jobs;
- exceptions to the general prohibition of forced labour are too wide.



## **Article 1 - Right to work**

### *Paragraph 3 - Free placement services*

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

The report describes the main competences of the National Employment Agency, namely placement services, managing unemployment benefits, organising vocational training with a view to facilitating re-entry to the labour market, etc. The Committee has previously noted that services are provided free of charge (Conclusions 2008). The National Employment Agency also prepares every year, on the basis of proposals submitted by its territorial structures, an Action Plan for the promotion of labour market policies.

The report indicates that the number of registered jobseekers increased from 48,396 in 2007 to 81,523 in 2010. On the contrary, the number of placements decreased from 23,715 in 2007 to 14,681 in 2010 (whilst the average time to fill a vacancy rose from 35 days in 2007 to 45 days in 2010). The report however does not state how many vacancies were registered by the National Employment Agency during the reference period, which would enable calculating the placement rate (an indicator which the Committee looks at to assess adequacy of employment services). The Committee therefore asks the next report to provide updated information both on the number of placements as well as on the number of vacancies registered by employment services.

It also asks for updated information on the number of persons working in the National Employment Agency, the proportion of the staff concerned with placement activities, and the number of jobseekers per placement counselor.

The report states there were 14 private employment agencies in 2010. The National Employment Agency monitors the activity of the private agencies, which must present statistical information on their activity every three months. In 2010, these agencies registered 731 vacancies, and placed 652 persons.

### *Conclusion*

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

## **Article 1 - Right to work**

### *Paragraph 4 - Vocational guidance, training and rehabilitation*

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

As the Republic of Moldova has accepted Articles 9 and 15§1 of the Charter, measures relating to vocational guidance, and to guidance and vocational training for persons with disabilities are dealt with under these provisions.

In these conclusions, the Committee found that the situation is not in conformity with Article 9 on the ground that it cannot be established that the right to vocational guidance within the education system and labour market is guaranteed.

It also found that the situation is not in conformity with Article 15§1 on the ground that: (i) there is no legislation explicitly protecting persons with disabilities from discrimination in education and training and (ii) the right of persons with disabilities to mainstream education and training is not effectively guaranteed.

The Committee deals here only with the vocational training of adult workers in view of the fact that the Republic of Moldova has not accepted Article 10§3.

### ***Continuing vocational training***

The report indicates that pursuant to Law No. 102-XV on employment and social protection of persons seeking a job, the National Employment Agency organises free of charge vocational training and re-training courses for the unemployed. The training is conducted by legally authorised educational institutions, public or private, taking into account the wishes and competences of the persons concerned.

In accordance with the Labour Code, vocational training is also available through companies, institutions and organisations. The employer and employee who wishes to follow continuing training enter an agreement which supplements the individual employment contract.

The Committee asks the next report to indicate the overall participation rate in continuing vocational training. It also asks what percentage of companies provide in-house training or other types of vocational training to employees, and on what conditions. The Committee recalls that in order to assess the effectiveness of continuing vocational training it needs up-to-date information on these matters.

### ***Conclusion***

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that:

- the right to vocational guidance within the education system and labour market is guaranteed;
- continuing vocational training services operate in an efficient manner;
- there is no legislation explicitly protecting persons with disabilities from discrimination in training;
- the right of persons with disabilities to mainstream training is effectively guaranteed.

## **Article 9 - Right to vocational guidance**

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

As the Republic of Moldova has accepted Article 15 of the Charter, measures relating to vocational guidance for persons with disabilities are dealt with under that provision.

### ***Vocational guidance within the education system***

#### ***a. Functions, organisation and operation***

In its last conclusion, the Committee asked for information in the next report on the organisation of vocational guidance in the education system and for a description of how it operates in practice.

In reply, the report states that vocational guidance is governed by the Government Decision no. 450 of 29 April 2004 concerning the “Regulation of professional guidance and psychological support of the population in the field of careers”, based on other legal instruments such as: Law no. 547, of 21 July 1995 on Education, Law no. 102-XV of 13 March 2003, on Employment and Social Protection of Jobseekers, Decision of Parliament no. 253-XV of 19 June 2003, approving the Conception of professional guidance, training and instruction of human resources.

The organisation and supervision of vocational guidance within the education system is carried out by the Ministry of Economy, the Ministry of Education, the Ministry of Labour, Social Protection and Family, the National Agency of Employment in cooperation with other ministries, departments and authorities of local public administration and enterprises, taking in consideration also the opinion of social partners and NGOs.

The national Agency of Employment is involved in providing vocational guidance within the education system by participating in seminars and trainings organised in schools for students of higher classes, in order to provide information on further education possibilities and the demands of labour market.

The report states that vocational guidance within the education system is carried out in an insufficient manner and that a system of vocational guidance matching the necessities of the educational system and labour market needs to be set up.

#### ***b. Expenditure, staffing and number of beneficiaries***

In its previous conclusions (Conclusions 2005, 2008), the Committee asked for information about expenditure on, the numbers of staff involved in and the number of persons assisted by the school vocational guidance system.

In view of the repeated lack of information, the Committee considers that it cannot be established that the right to vocational guidance within the education system is guaranteed by appropriate provisions of expenditure and staffing and made available to an appropriate number of beneficiaries.

### ***Vocational guidance in the labour market***

#### ***a. Functions, organisation and operation***

The report states that the National Agency of Employment carries out vocational guidance services for persons who make use of employment agencies. Public Service of Employment carries out partially vocational guidance services as well. In its last conclusion, the

Committee asked for information on the proportion of the vocational guidance market occupied by private employment agencies.

***b. Expenditure, staffing and number of beneficiaries***

In its last conclusions (Conclusions 2005, 2008), the Committee asked for information on the ratio of the number of persons requesting assistance from the guidance services to the number of persons actually in receipt of such assistance and also details of the total budget allocated to vocational guidance, the staffing of vocational guidance services and the minimum qualifications required.

In reply, the report states that, during the reference period, the number of staff employed by the National Agency of Employment has been reduced and, as a result, these services were provided in an insufficient manner by the staff available. During the reference period (2007-2010), around 150 000 persons benefited of vocational guidance services provided by the National Agency of Employment, of which: 56,4% were women and 51,5% were young persons aged between 16-29 years old. In 2010, the agency received 32 400 lei (2 000 €) for vocational guidance purposes.

The Committee considers that this information is not sufficient in order to establish that the right to vocational guidance in the labour market is guaranteed by appropriate provisions of expenditure and staffing and made available to an appropriate number of beneficiaries.

***Dissemination of information***

Dissemination of information is carried out by the National Agency of Employment, through various means such as: radio and tv programmes, written media, leaflets and booklets which are published annually.

***Equal treatment of nationals of the other States Parties***

In its last conclusion, the Committee found the situation not to be in conformity with Article 9 of the Charter on the ground that it had not been established that all nationals of States Parties are guaranteed equal treatment due to repeated lack of information.

The present report states that equality of treatment is guaranteed by several legal instruments. More specifically, Law no. 102-XV of 13 March 2003 on Employment and Social Protection of Jobseekers was amended and at present includes as beneficiaries foreigner citizens holding a permanent or temporary residence permit. As a result, vocational guidance is provided to these categories in the same manner as citizens of the Republic of Moldova.

The Committee considers the situation to be in conformity on this ground.

***Conclusion***

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 9 of the Charter on the ground that it cannot be established that the right to vocational guidance within the education system and labour market is guaranteed.

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

### *Paragraph 1 - Vocational training for persons with disabilities*

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

The Committee observes that to assess the effective equal access of children and adults with disabilities to education and vocational training, it systematically should be informed of the following key figures:

- total number of persons with disabilities, including the number of children;
- number of students with disabilities following mainstream education and vocational facilities;
- number of students with disabilities following special school education or training facilities;
- the percentage of students with disabilities entering the labour market following mainstream or special education or/and training.

It asks the next report to provide such figures and recalls that where it is known that a certain category of persons is, or might be, discriminated against, it is the national authorities' duty to collect data to assess the extent of the problem (*European Roma Rights Centre v. Greece*, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27). The gathering and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of rational policy (*European Roma Rights Centre v. Italy*, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23).

According to the report, at 1 January 2011 there were 179,060 disabled people, of whom 15,088 children. The Republic of Moldova ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) in July 2010 and adopted a Strategy on the Social Inclusion of Persons with Disabilities and an Action Plan 2010-2013, providing a range of measures to be taken by the state to guarantee the rights of persons with disabilities.

A report by the Center for Legal Assistance for Persons with Disabilities, appended to a memorandum of the United Nations Country Team Moldova of 19 August 2010 to the Office of the High Commissioner for Human Rights (OHCHR)<sup>1</sup> indicates an increasing trend as regards both the number of people with permanent disabilities, as well as the disability index. According to this report, based on data provided by the Ministry of Social Protection, Family and Child, in 2008, 14,021 persons fell within the degree of disability, by 1.7% more than in 2007 (13,779 persons). The incidence of primary disability in 2010 was 392 cases per 100,000 inhabitants, compared to 384 cases in 2007. 88,1% of primary disabled people are of working age and most of them live in rural areas.

### ***Definition of disability***

In its previous conclusions 2005 and 2008, the Committee asked whether any steps have been taken to move away from a medical definition of disability towards a more social definition such as that endorsed by the World Health Organisation in its International Classification of Functioning (ICF 2001), i.e. whether the criteria used for the assessment of the status of disability take into account not only medical characteristics, but also educational, psychological, and other socio-economic factors.

The report indicates that in 2011 (outside the reference period) a roadmap has been elaborated for the formulation of a new methodology to determine disability and pass from the current medical system to a medical-social system, in order to ensure an actual inclusion

of persons with disabilities, but the issue is still under examination. The Committee asks to be informed, in the next report, of the follow up given to this roadmap.

### ***Anti-discrimination legislation***

The Constitution's equality provision at Article 16 does not provide a ban on discrimination on grounds of disability or health status, or even a generic "other status" ground which might encompass such discrimination. The memorandum mentioned above acknowledges that the Republic of Moldova still lacks an anti-discrimination law providing an effective ban on discrimination on grounds of disability, combined with patterns and practices of unchallenged discrimination against persons with disabilities.

A draft anti-discrimination law was put on the Parliamentary agenda in 2008, but then withdrawn. A new one was tabled before the Parliament in 2011, which would ban direct and indirect discrimination and would set up an enforcement body, "the Council for Preventing and Combating Discrimination", with the power to issue fines to persons and entities found guilty of discriminating. The bill presents however some shortcomings: for example, while it introduces a ban on discrimination on grounds of disability, it does not include a requirement of "reasonable accommodation" as per the CRPD; a second issue concerns the enforcement mechanism and the lack of effective remedies afforded; finally, the bill provides in its draft Article 7(3) for exceptions which, if wrongly applied, might undermine the effectiveness of the law itself<sup>2</sup>.

The Committee recalls that it had already asked in its conclusions 2005 and 2008 for clarifications as regards the existence of appropriate anti-discrimination legislation in the field of education and as regards a Code on education on mainstreaming in ordinary and special education, which was under preparation. Having received no reply on this points and in the light of the information concerning the anti-discrimination bill tabled for adoption, it reiterates its requests for information and concludes in the meanwhile that the rights of persons with disabilities to protection against discrimination are not guaranteed in the Republic of Moldova. It furthermore points out that should the next report not provide the requested information, nothing will allow to establish that the situation is in conformity with Article 15§1 of the Charter.

### ***Education***

The 1991 law on social protection of persons with disabilities guarantees the right to education in pre-school and comprehensive school-type institutions for persons with disabilities. In case their health conditions do not allow them to attend the comprehensive educational institutions, they may study in special institutions or may benefit from home-education, at the parents' choice. In addition, persons with disabilities have preferential rights to attend specialised secondary and higher education institutions and are entitled to school tax exemptions and additional scholarship irrespective of whether they already benefit from disability pensions or allocations. According to the report, thanks to these measures, 13 motor-impaired students are registered into higher education institutions.

The report indicates a number of recent legislative initiatives in the field of education of children with disabilities: a National Strategy "Education for all" was approved as from 2003; a Strategy for the Social Inclusion of Disabled people (2010-2013) was approved in 2010; a Programme for the development of inclusive education for 2011-2020 was approved in 2011 (out of the reference period); a Consolidated Development Strategy for teaching 2011-2015 was approved end 2010. Furthermore, an amendment to the Code of Education is planned to set up support teachers in view of promoting inclusive education. A Coordination council has also been set up in 2010 to promote the reform of the residential care system and the development of inclusive education. Other Ministerial orders aiming at promoting inclusive education and reforming residential institutions have been issued in 2009 and 2010 as well

as instructions to educational institutions recommending a number of measures to facilitate access to disabled students (extra-school programmes, elimination of physical barriers, free accommodation at universities etc.).

In practice, however, mainstream education seems to be the exception rather than the rule. According to the report, 2500 children were in special secondary schools for children with sensorial and physical disabilities and 671 in schools for children with mental disabilities. The report indicates a diminution, between 2007 and 2010, in the number of children placed in special institutions for children with special needs (from 4441 to 3171) and in the number of children placed in residential institutions (decrease by 32.6%), 431 children having reintegrated their families and 106 having been placed in alternative services.

A report of 2009, commissioned by Unicef, on "Assessment and Recommendation on Child Disability Prevention and Care System in the Republic of Moldova" <sup>3</sup> indicates that in practice only 2.7% of approximately 11,800 children with disabilities aged 7 to 18 years old are using inclusive education services. Furthermore, 68% of disabled children are placed in residential educational institutions, so that they are physically and socially excluded from families and communities. The physical environment of schools does not fit the needs of children with disabilities. The lack of professionals involved in inclusive education and the shortage of training methodologies and tools, make schools not acceptable and available for children with disabilities, that's why most parents choose residential institutions instead of inclusive education institutions. While a better situation exist in Chisinau, Balti and Criuleni, the same quality of service is not ensured throughout the country.

A report by the Center for Legal Assistance for Persons with Disabilities, appended to the 2010 memorandum to the OHCHR mentioned above, indicates that autistic children are not allowed to go to kindergarten or school. It is estimated that out of the approximately 40,000 children born annually, some 240-280 children/year are potential children with autistic syndrome, a figure which is underestimated because, for reasons of prejudices and stereotypes, a number of parents prefer not to register children with the specialized hospitals. The same applies to children with severe or medium level of mental disability, who are not integrated in kindergartens.

Efforts are being made to ensure, in certain universities, initial training on inclusive education teaching and thanks to the contribution of Unicef and NGOs in 2010 some 1664 people have been trained in this field, but much remains to be done to establish integration methodologies and tools.

The Committee refers to its conclusions 2005 and 2008, raising a number of detailed questions aimed at assessing whether disabled persons are guaranteed an effective right to education both in law and in practice. Since these questions remain unanswered, the Committee reiterates them and underlines that, should the next report fail to provide the requested information once more, nothing will demonstrate that the situation is in conformity with Article 15§1 of the Charter. In the meanwhile, in the light of the information available, it concludes that the situation in the Republic of Moldova is not in conformity with Article 15§1 of the Charter on grounds that mainstreaming of people with disabilities is not effectively guaranteed in education and training.

### ***Vocational training***

The report does not provide information as regards vocational training. According to the Center for Legal Assistance for Persons with Disabilities, in a report appended to the 2010 memorandum to the OHCHR mentioned above, the Republic of Moldova has no coherent policy on integrating people with disabilities in the labour field or providing them vocational guidance services. The same conclusion appears in the Unicef report of 2009 mentioned above.

In the light of these elements and of the absence of reply to the questions already raised in the conclusions 2005 and 2008, the Committee reiterates its questions, it points out that, should the requested information not be provided in the next report, nothing will allow to establish that the situation is in conformity with Article 15§1 of the Charter, and concludes that mainstreaming of persons with disabilities in vocational training is not effective in the Republic of Moldova.

### *Conclusion*

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

- there is no legislation explicitly protecting persons with disabilities from discrimination in education and training and
- the right of persons with disabilities to mainstream education and training is not effectively guaranteed.

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<sup>1</sup><http://www2.ohchr.org/english/issues/disability/docs/study/UnitedNationsMoldova.pdf>

<sup>2</sup>[http://www.un.md/news\\_room/pr/2011/04\\_03/index.shtml](http://www.un.md/news_room/pr/2011/04_03/index.shtml)

<sup>3</sup>[http://www.unicef.org/moldova/ro/Children\\_with\\_disabilities\\_ENG.pdf](http://www.unicef.org/moldova/ro/Children_with_disabilities_ENG.pdf)



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

### ***Paragraph 2 - Employment of persons with disabilities***

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

### ***Employment of persons with disabilities***

The report indicates that there are 179,060 disabled people, including 15,088 children. The Center for Legal Assistance for Persons with Disabilities reports that 88.1% of people with primary disabilities are of a working age. The Committee highlights that it needs to systematically be provided with up-to-date figures concerning the total number of persons with disabilities employed (on the open market and in sheltered employment), those benefiting from employment promotion measures and those seeking employment as well as of those who are unemployed. In this regard, the Committee recalls that where it is known that a certain category of persons is, or might be, discriminated against, it is the duty of national authorities to collect data to assess the extent of the problem (European Roma Rights Centre v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27). The gathering and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of rational policy (European Roma Rights Centre v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23).

### ***Anti-discrimination legislation***

According to the reply given to the Governmental Committee, the new law on safety and health at the workplace of July 2008 (Act 186/2008) includes a requirement of reasonable accommodation and remedies against discrimination in employment exist in Article 20 of the Constitution and Article 55 of the Labour Code. The Committee notes that the provisions referred to do not contain any reference to anti-discrimination of disabled people in the labour market (they refer respectively to free access to justice and to Definite term individual labour contracts) and asks next report to provide the translation of the relevant provisions of the law of 2008 referred to. It notes from another source ("A comprehensive anti-discrimination law for the Republic of Moldova", article by Claude Cahn, UN Human Rights advisor) that the Constitution's equality provision (Article 16) does not encompass disability, that a draft anti-discrimination law presented to the Parliament was withdrawn and that the new one, tabled before the Parliament in 2011, raises a number of problems (see Conclusions 15§1). Different sources also indicate that the requirement of reasonable accommodation is not yet provided for in the Republic of Moldova<sup>1</sup>. In the light of this situation, the Committee reiterates the questions raised in the Conclusions 2008 and concludes in the meanwhile that it is not established that the rights of persons with disabilities to protection against discrimination in employment are adequately guaranteed.

### ***Measures to encourage the employment of persons with disabilities***

The 1991 Law on social protection of disabled people provides that every company, institution and organisation is required to reserve at least 5% of the total number of jobs for people with disabilities. Employers who fail to do so should pay to the unemployment fund a sum corresponding to the average annual salary for each unreserved job. The Center for Legal Assistance of Persons with Disabilities states however that this provision is not applied and that the lack of a coherent social policy of inclusion of disabled people into the workforce is acknowledged in the Social Inclusion Strategy for people with disabilities for 2010-2013, adopted in July 2010 (Act 169/2010). The report also acknowledges that the law is not

adequately implemented and that a new draft law on Disabled People Inclusion is being drafted, in conformity with European and international standards.

There are no incentives for employers to recruit people with disabilities, with the exception of institutions in which at least half of the employees are disabled, which are subsidised by the state budget. The Societies of Invalids, Deaf and Blind have such companies (approximately 20), employing in 2011 around 15,000 disabled people (they were around 5,000 in 2008), according to information from the Center for Legal Assistance of Persons with Disabilities. According to the report, on the other hand, NGOs have some 15 specialised companies, employing around 500 disabled people.

The Center for Legal Assistance of Persons with Disabilities points out that a main obstacle to the employment of people with disabilities results from the fact that in the Moldovan legal framework they are defined as unfit to work and that, regardless of the individual capacities, as long as the person moves around in a wheelchair or has a poor eyesight, he/she is considered invalid and will be employed according to the medical prescription and not his/her working capacity. That would explain why so few disabled people apply to employment agencies and hardly 10% to 30% of them are recruited, and even then only among those with partial disabilities (level III). The others (level I and II, concerning respectively people needing constant attendance or not), amongst which there are people with mobility and visual impairments, are considered to have a full incapacity to work. In fact, disabled people applying to employment agencies are less than 1% of the total number of job seekers and the percentage of disabled people placed remains very low (23% in 2007, 29% in 2008, 11% in 2009 and 13% in 2010). A World Bank report of 2008 indicates the Republic of Moldova as the worst example of inclusion of disabled people in Eastern Europe: they are 60% less likely to be employed, only 5.8% of the most severely disabled are employed, followed by 10.7% and 17.9% as severity decreases; furthermore, disabled people in the Republic of Moldova are reported to earn over 40% less than non disabled workers.

The report indicates that people with severe disabilities (level I and II) can nevertheless have free access to professional information, advisory and mediation services, while those with a partial disability (level III) have full access to all existing measures to facilitate employment, such as being trained to perform public works (for which, they can get 30% salary).

Measures to improve this situation have been adopted in July 2011 (outside the reference period): Act 56/2011 amends the previous legislation (Act 102-XV/2003) with a view to ensuring that disabled people recognised as fit for work by a medical committee (Territorial Primary Board of Medical Expertise of Vitality) be automatically registered on placement lists. These amendments are however not applied yet because the implementing rules are not adopted. A roadmap for the formulation of a new methodology to determine disability and pass from the current medical system to a medical-social system is also under examination. In 2006, some measures were taken to ensure unemployment insurance for disabled people and different initiatives have taken place to raise awareness of the issues related to the employment of disabled people and identify possible steps to be taken.

The Committee requests the next report to inform it of the follow-up given to the various legislative and non-legislative initiatives under way with a view to improving inclusion of disabled people in employment. It also requests information on the effective application of provisions concerning disabled people's employment (in particular, the Strategy for People with Disabilities 2010-2013) and on remedies available to enforce disabled people's employment rights as well as updated data on the number of disabled people employed in the open market and sheltered employment. In the meanwhile, the Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 15§2 of the Charter.

## *Conclusion*

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that people with disabilities are guaranteed effective protection against discrimination in employment.

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<sup>1</sup>MDAC Mental Disability Advocacy Centre - Moldova ; "A Comprehensive Anti-Discrimination Law for the Republic of Moldova", article by Claude Cahn, UN Human rights Advisor on UN Moldova website ; OSCE-ODIHR opinion on the revised draft law on preventing and combating discrimination of the Republic of Moldova 13/10/2011 ; EU Second progress report on the implementation by the Republic of Moldova of the Action Plan on Visa Liberalisation, 9/02/2012.

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

### ***Paragraph 3 - Liberalising regulations***

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

### ***Access to the national labour market***

In its previous conclusion (Conclusions 2008) the Committee asked whether there were any plans to liberalise the system of immigration quotas. It also asked whether foreign nationals were allowed to operate as self-employed persons in the Republic Moldova and what rules applied in this respect. The Committee notes that immigration quotas for employment are still in place.

The Committee notes from the report that Law No. 200 of 16 July 2010 on the regime of aliens in the Republic of Moldova regulates the entry, stay and exit of foreigners as well as the granting and extension of the right to stay.

Furthermore, the Committee notes that the Decision of the Government No. 1187 of 22.12.2010 on the implementation of one-stop shop for foreigners provides for a simplified mechanism by establishing a unique procedure to obtain work and residence permits through a single institution. Applications for residence permit for the purposes of employment are sent by courier to the National Agency of Employment of the Ministry of Labour, Social Protection and Family which decides on the granting of work permit. Its decisions are then transmitted by the same post to the Office of Migration and Asylum. The decisions to grant work permit and temporary residence permit are taken within 30 days after application has been made, for the period of one year, renewable.

As regards self-employment of foreign workers, the Committee notes that the report does not provide any information. The Committee asks again what rules govern self-employment of foreign workers and holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

### ***Exercise of the right of employment / Consequences of job loss***

In its previous conclusion the Committee asked whether the loss of job led to loss of residence permit thereby obliging the workers to leave the country as soon as possible.

The Committee notes that the work permit can be revoked if the work contract is terminated for justified reasons. The decision to revoke work permit is communicated to the Ministry of Interior within 5 days it is taken, indicating the ground. This decision is the basis for revoking the temporary residence permit for the purposes of work.

Besides, according to the report, a temporary residence permit for the purposes of work can be revoked, according to Article 49 of the Law No 200 of 16 July 2010 by a competent authority if the worker no longer meets the conditions under which it was granted.

According to the legislation of the Republic of Moldova, the work permit can be revoked when the work contract is terminated for justified reasons, and this decision can be the sole basis for the revocation of the temporary residence permit.

The Committee observes that both the granting and the cancellation of work and temporary residence permits may well be interlinked, in as much as they refer to the same case in question- whether or not to enable a foreigner to engage in a gainful occupation. However, in case a work permit is revoked before the date of expiry, either because the work contract is prematurely terminated, or because the worker no longer meets the conditions under which

the work permit was granted, it would be contrary to the Charter to automatically deprive such worker of the possibility to continue to reside in the State concerned and to seek another job and a new work permit, unless there are exceptional circumstances which would authorise expulsion of the foreign worker concerned, in the meaning of Article 19§8.

The Committee holds that the situation is contrary to Article 18§3 of the Charter, as the foreign worker should leave the country as soon as possible if he/she loses the job.

#### *Conclusion*

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 18§3 of the Charter on the ground that termination of employment contract of the foreign worker leads to cancellation of the temporary residence permit thus obliging him/her to leave the country as soon as possible.

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

*Paragraph 4 - Right of nationals to leave the country*

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

The Committee notes that in accordance with the Law No 180 on labour migration the nationals of Moldova may engage in a gainful occupation in other states either in an individual manner on the basis of a labour contract or through the intermediary agency, in conformity with bilateral agreements.

*Conclusion*

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

## **Article 20 - Right to equal opportunities and equal treatment in employment and occupation without sex discrimination**

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

### ***Equal rights***

The Committee has examined the legislative framework for the right to equal treatment at work in previous conclusions (Conclusions 2006 and 2008) and therefore refers to these for an overview of the laws in this field.

The Committee notes in particular that under Article 11 of Law No. 5-XVI of 9 February 2006 on equal opportunities between women and men, it is prohibited to indicate a preference for one of the sexes in job vacancy notices (or set conditions resulting in such a preference), except in cases where this is crucial because of the nature of the work or the working conditions. By way of an example, the report refers to safety and supervisory systems designed specifically for women or men. The Committee asks for more details on this specific example. It also asks for other examples of such exceptions to be given in the next report.

The Committee notes that, according to the information provided in the report under article 1§2, under Article 2 of the law of 9 February 2006, indirect discrimination on the ground of sex is the result of any identical act, rule or practice for women and men producing a different effect or result for one of the sexes.

According to the report, the Law of 9 February 2006 provides that persons who consider themselves to have been the victims of discrimination on the ground of sex as a result of a decision by their employer can ask the employer in writing for the reasons for the decision. Employers have 30 days to reply to such requests, failing which their employee may take legal action against them. The Committee asks whether persons who consider themselves to have been victims of discrimination are entitled to take legal action under any circumstance or if this right is restricted to the case mentioned above. In this connection, it points to the comment made by the United Nations working group on discrimination against women in legislation and in practice after a visit to the Republic of Moldova, according to which there are obstacles to the enforcement of legislation which have undermined women's access to full judicial recourse and remedies<sup>1</sup>. The Committee asks for a comment on this in the next report. In addition, the Committee asks whether in all gender discrimination cases there is a shift of the burden of proof and further information on the number of gender discrimination cases brought before the courts. It also requests information on sanctions and remedies, including on the existence of any limits to the amount of compensation that may be awarded.

Article 10 of the Labour Code establishes the principle of equal pay for work of equal value. The Committee asks whether legislation permits, in equal pay cases, comparisons of pay and jobs to be made outside the undertaking/company directly concerned and under what circumstances. It refers to its statement in the General Introduction of these conclusions in this respect.

The Committee notes that Article 248 of the Labour Code prohibits the employment of women in heavy work along with underground work with the exception of work in sanitary services and work not requiring physical effort. It points out that this type of prohibition is at variance with the principle of equality enshrined in Article 20 of the Charter.

### ***Specific protection measures***

The Committee recalls that it examines measures relating to maternity protection and family responsibilities under Article 8 and 27 of the Charter.

***Position of women in employment and training – Measures to promote equal opportunities***

The Committee asks for the next report to give the men's and women's employment rates and account for any significant difference between the two.

Unemployment is higher among men than among women. In 2010, the rates were respectively 9.1% and 5.7%. The Committee asks for the difference to be accounted for in the next report.

The report asserts that men and women in comparable situations receive equal pay for the same work. The Committee asks for precise information in the next report which bears out this assertion. On the other hand, the report recognises that the national average wage of women is lower than that of men. The wage gap is still considerable even though the situation is improving (it was 27.4% in 2007 and 23.9% in 2010). The gap is explained in the report by the fact that men are traditionally employed in higher-ranking, better-paid jobs than women in the private sector, where the wages are higher, whereas women work mainly in the social sector, where wages are lower. Wage increases in some sectors in which traditionally more women are employed (such as teaching) have helped to narrow the gap. The Committee asks for a description in the next report of the measures taken to narrow the gap still further.

The Committee notes from the report that the military institute of the armed forces is open only to men because there are no amenities for female students and no funding to set such amenities up. The report points out that women can gain a military training despite this through military chairs at universities. The Committee notes that this situation may limit women's access to military training and that access through military chairs alone – which seem to be available to both women and men – is not enough to compensate for this difference in treatment. It asks for clarification of the situation in the next report, demonstrating in what way women are given the same access to military training as men, enabling them to take up the same jobs and grades when their training is over.

The Committee notes that in 2006, the Committee on the Elimination of Discrimination against Women encouraged the Republic of Moldova “to implement measures to increase the number of women in decision-making positions, in particular at the local level, in parliament, in political parties and in the judiciary and the civil service” (Concluding comments of the Committee on the Elimination of Discrimination against Women, document CEDAW/C/MDA/CO/3, 25 August 2006, §27). It asks what measures have been taken in this respect and what proportion of decision-making posts are occupied by women.

The Committee notes that a national plan was drawn up to promote equal opportunities for women and men between 2006 and 2009 along with a national programme to secure gender equality for the period from 2010-2015. The Ministry of Labour, Social Protection and Family Affairs has also launched a review of national legislation in the sphere of equal opportunities to identify gaps in the rules and shortcomings in the practical implementation. The Committee asks for an assessment of the progress made and the problems encountered to be presented in the next report.

The Committee also notes that in 2006 a Governmental Committee on gender equality was established, whose role is to co-ordinate the activities of central government and local authorities in the gender equality field. It asks what impact the work of this Committee has had.



### *Conclusion*

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 20 of the Charter on the ground that the legislation prohibits the employment of women in heavy work and in underground work.

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<sup>1</sup>See the *End of Mission Statement of the Working Group on discrimination against women in law and in practice* (30 May 2012): <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12197&LangID=E>

## **Article 24 - Right to protection in case of dismissal**

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

### ***Scope***

The Committee notes that the situation which it has previously (Conclusions 2008) found to be in conformity with the Charter has not changed.

### ***Obligation to provide a valid reason***

The report reiterates the valid grounds for termination of employment as stipulated in Article 86 of the Labour Code. It further provides information on other legislative acts which provide dismissal rules in specific fields of activity, such as for the police.

The Committee asks whether in cases of dismissal on economic grounds the courts have the competence to review the facts underlying dismissal or just points of law.

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

The Committee further recalls that Article 24 establishes in an exhaustive manner the valid grounds on which an employer can terminate an employment relationship. Two types of grounds are considered valid, namely on the one hand those connected with the capacity or conduct of the employee and on the other hand those based on the operational requirements of the enterprise (economic reasons).

The Committee holds that under Article 24 dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age (age when an individual becomes entitled to a pension) will be contrary to the Charter, unless the termination is properly justified with reference to one of the valid grounds expressly established by this provision of the Charter.

The Committee asks how the legislation complies with this approach.

### ***Prohibited dismissals***

The Committee notes that Article 86 of the Labour Code prohibits dismissal during sick leave. In this connection the Committee asks whether there is a time limit placed on protection against dismissal in such cases and what rules apply in case of permanent disability.

### ***Remedies and sanctions***

The Committee notes from the report that according to Article 20 of the Labour Code an employee has a right to contest the dismissal decision in the court. The latter has 30 days to resolve the dispute. As regards compensation in case of unlawful dismissal, the employer, according to Article 90 shall pay the damages for the whole period of forced absence from work in the amount not less than average salary of the employee. The amount of non-pecuniary damage is also determined by the court which cannot be inferior to one month salary of the employee. In addition, instead of reinstatement the court may order a supplementary compensation in the amount of three months salary. The Committee understands that there is no limit established by law to the compensation in case of unlawful dismissal. It asks whether this understanding is correct.

The Committee takes note of the statistics relating to the number of litigations regarding dismissal as well as the amounts paid in compensation for unlawful dismissals.

*Conclusion*

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by the Republic Moldova under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.