



November 2008

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2008 (MOLDOVA)

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

Introduction

The function of the European Committee of Social Rights is to assess the conformity of national law and practice with the European Social Charter and the Revised 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 figure in the General Introduction to the Conclusions¹.

The Revised European Social Charter was ratified by Moldova on 8 November 2001. The time limit for submitting the fourth report on the application of the Revised Charter to the Council of Europe was 31 October 2007 and Moldova submitted it on 9 November 2007. On 12 February 2008, a letter was addressed to the Government requesting supplementary information regarding Articles 18§3 and 18§4. The Government submitted its reply on 31 March 2008.

This report was the first under the new system for the submission of reports adopted by the Committee of Ministers.² It concerned 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),
- right of workers to the protection of claims in the event of insolvency of the employer (Article 25).

Moldova has accepted these articles with the exception of Articles 10, 15§3, 18§1, 18§2 and 25.

The applicable reference periods were:

- 1 January 2004 – 31 December 2006 for Article 18;
- 1 January 2005 – 31 December 2006 for Articles 1, 9, 15, 20 and 24.

The present chapter on Moldova concerns 11 situations and contains:

- 3 conclusions of conformity: Articles 1§3, 18§4 and 24;
- 5 conclusions of non-conformity: Articles 1§2, 1§4, 9, 15§1 and 15§2.

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

² Decision adopted at the 963rd meeting of the Ministers’ Deputies on 3 May 2006.

In respect of the 4 other situations concerning Articles 1§1, 18§3 et 20, the Committee needs further information. The Government is therefore invited to provide this information in the next report on the articles/provisions in question.

The next Moldovan report concern the accepted provisions of the following article 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 2008.

Article 1 – Right to work

Paragraph 1 – Policy of full employment

The Committee takes note of the information provided in Moldova's report.

Employment situation

The Committee notes from Eurostat that the growth, although still high (3.96% in 2006), slowed during the reference period (7.4% in 2004).

The employment rate fell below 50% in 2006 (at 47.7%), considerably lower than the EU-15 average (66.2% in 2006). The decrease was greater for women than men, with the result that the employment rate for women is now lower (at 45.7% in 2006) than that of men (48.6% in 2006).

As to unemployment, it continued to decline during the reference period, reaching 7.4% in 2006. The same applies to the number of unemployed women as a proportion of female labour force (45.7% in 2006) and the youth unemployment rate (for 15 to 24 year-olds), which was 17.1% in 2006. On the other hand, the number of the long-term unemployed as a proportion of all unemployed significantly increased (from 3.7% in 2004 to 13.3% in 2006).

In the absence of any information in the report, the Committee asks for the statistics on unemployment among persons with disabilities and foreign nationals.

Employment policy

According to the report, a series of legislative measures were adopted, setting out a range of active measures (covering vocational guidance, employment promotion and vocational training in particular) intended for all vulnerable groups. Programmes for the recruitment of young people in exchange for compensatory payments for their employers were also launched during the reference period.

According to the report, 4,629 unemployed people attended vocational training courses in 2006. However, the report does not answer the questions put by the Committee in its previous conclusion (Conclusions 2006 Moldova).

The Committee therefore asks again for the next report to provide the following information:

- the total number of beneficiaries of active measures for all categories of jobseekers;
- the average time that elapses between a person registering as unemployed and receiving an offer of participation in an active measure.

In reply to the Committee, the report states that spending on employment policy has increased in recent years, amounting to 32 million Moldovan lei (MDL) (or nearly €1.94 million) in 2006. The Committee notes that a little over half of this amount was spent on active measures. In the absence of any further information, it asks again for the next report to give the figure for total expenditure on employment policies as a percentage of GDP, specifying what proportions are devoted to active and passive measures.

Conclusion

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

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

The Committee takes note of the information provided in Moldova's report.

1. Prohibition of discrimination in employment

The Committee reiterates that under Article 1§2, legislation should prohibit discrimination in employment at least on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion (Conclusions 2006 Moldova, Albania).

Legislation must cover both direct and indirect discrimination (Conclusions XVIII-1, Austria). With regard to indirect discrimination, the Committee points out that Article E of the Revised Charter prohibits “all forms of indirect discrimination” and that “such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all” (Autism-Europe v. France, Collective Complaint No. 13/2002, decision on the merits of 4 November 2003, §52).

As with other states that have accepted Article 15§2 of the Revised Charter, the Committee will examine Moldova’s legislation banning discrimination based on disability under this provision. Similarly, for states such as Moldova that have accepted Article 20, the right to equal treatment and opportunities without discrimination based on sex is considered under this provision.

The Moldovan Labour Code prohibits all direct or indirect discrimination in employment relationships on grounds of sex, age, race, nationality, beliefs, political opinions, social background, place of residence, physical, cognitive or mental disability, membership of a trade union or involvement in trade union activities, or on any other ground (Article 8). As the report provides no further information on these matters, the Committee asks again whether discrimination on the ground of sexual orientation is prohibited and how the concepts of indirect discrimination and the prohibition of discrimination on the ground of age are interpreted.

Article 47 of the Labour Code prohibits discrimination on recruitment on a number of grounds. The Committee noted in its previous conclusions that the list of grounds is shorter here than in Article 8 and that discrimination on grounds of age, ethnic origin, disability and sexual orientation are not mentioned. The Committee asks again for more information on the subject.

According to the report, Act No. 102-XV of 13 March 2003 on the employment and social protection of jobseekers was amended by Act No. 100-XVI of 27 May 2005 to prohibit discrimination in job offers on grounds of nationality, ethnic origin, sex, age, political opinion or social background. The Committee asks what the justification for this restricted list is and why discrimination on grounds of race, religion, disability and sexual orientation are not included.

In its previous conclusions, the Committee noted that exceptions to the prohibition on discrimination were made for essential professional requirements or to establish positive action measures. It asked for examples of essential professional requirements. As there is nothing in the report on this point, the Committee repeats its request.

In its previous conclusions, (Conclusions 2006) the Committee noted that it was possible for the courts to provide compensation for an unlawful dismissal or unlawful assignment to another post. It asks again for information on remedies for other cases of discrimination.

The Committee points out that under Article 1§2 of the Revised Charter, any compensation awarded to a victim of discrimination must be effective and proportionate and act as a deterrent. It considers therefore that imposing a predetermined upper limit is not in conformity with the Revised Charter as in some cases this may mean that the compensation awarded is not commensurate with the loss or damage incurred and not

sufficiently dissuasive for the employer (Conclusions 2006 *Moldova*, *Albania*). The Committee therefore asks again whether there is an upper limit on the compensation that can be awarded in cases of discrimination.

The Committee points out that domestic law must make provision for an alleviation of the burden of proof, shifting it away from the plaintiff in cases of discrimination (Conclusions 2002, *France*; *SUD Travail Affaires Sociales v. France*, Collective Complaint No. 24/2004, decision on the merits of 16 November 2005, §33). The Committee notes that the report fails to address this question despite its request in previous conclusions. It asks again whether the burden of proof is alleviated in this way in discrimination cases.

In previous conclusions, it has been noted that the labour inspectorate and unions are entitled to institute judicial proceedings in cases of alleged discrimination. The Committee asked nonetheless whether associations, organisations or other legal entities, which had, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring respect for equal treatment within the meaning of Article 1§2 of the Revised Charter, had the right to obtain a ruling that the prohibition of discrimination had been violated and whether any other specific independent bodies had been established to promote equal treatment; it also asked for information on any measures taken to promote equality in employment. The report fails to provide any information in this respect so the Committee repeats its questions.

The Committee points out that under Article 1§2 of the Revised Charter, while it is possible for states to make foreign nationals' access to employment on their territory subject to possession of a work permit, they cannot ban nationals of States Parties in general from occupying jobs for reasons other than those set out in Article G. Restrictions on the rights guaranteed by the Revised Charter are admitted only if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The only jobs from which foreigners may be banned are therefore those that are inherently connected with the protection of law and order or national security and involve the exercise of public authority.

In its previous conclusion, the Committee asked if nationals of other States Parties could be employed in the civil service, local government etc., where such positions were not concerned with national security or exercising public authority to guarantee public order and security. It also asked if other occupations outside the public services were reserved for Moldovan nationals. The report fails to address these matters so the Committee repeats its questions.

2. Prohibition of forced labour

The report fails to provide the information the Committee asked for in its previous conclusions about the legislation governing compulsory work to be carried out in times of national emergencies. It repeats its request for this information.

Prison work

The Committee points out that prisoners' working conditions (including pay, hours and social security) must be regulated, particularly if they are working for private companies. For instance, prisoners may only be employed in workshops run by private companies with their consent and in conditions as close as possible to a private employment relationship (Conclusions XVI-1, *Germany*).

The Committee notes from the report that prisoners may be required to work for private companies but they must receive proper pay, in conformity with labour legislation and no lower than the minimum wage. The Committee wishes, nonetheless, to obtain more

detailed information on prison work and so it repeats the questions it put in the General Introduction to Conclusions 2006 Moldova:

- Can a prisoner be required to work (irrespective of consent):
 - A. for a private undertaking/enterprise
 - i) within the prison?
 - ii) outside the prison?
 - B. for a public/state undertaking
 - i) within the prison?
 - ii) outside the prison?
- What types of work may a prisoner be obliged to perform?
- What are the conditions of employment and how are they determined?

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

Privacy at work

The Committee asks for information to enable it to determine how far human freedom and dignity are protected by legislation and the courts against intrusions into personal or private life that may be associated with or result from the employment relationship (see observations on Article 1§2, general introduction to Conclusions 2006 Moldova, §13-21).

Service required to replace military service

In its previous conclusions, the Committee noted that alternative service lasted 24 months, while military service lasted twelve. This prompted the Committee to conclude that the situation was not in conformity with Article 1§2 of the Revised Charter because the length of alternative service excessively restricted the worker's right to earn a living in an occupation freely entered upon.

Although it did not fall within the reference period, the Committee takes due note of the adoption of Act No. 156-XVI of 6 July 2007 on the organisation of (alternative) civil service, which reduces the length of service to twelve months. The Committee considers that, this reform will enable Moldova to be in conformity with Article 1§2 of the Revised Charter on this point. However, the situation was not in conformity with the Revised Charter during the reference period. It asks, however, for the next report to indicate when the law has come into force.

Part-time work

Having had no response to its request, the Committee asks again for the next report to state what legal safeguards there are to ensure equality between part-time and full-time workers.

Restrictions linked to the fight against terrorism

The Committee notes that the report does not answer the question it put in the previous conclusions as to whether legislation against terrorism exists and whether it precludes persons from taking up certain employment. It therefore repeats the question.

Conclusion

The Committee concludes that the situation in Moldova is not in conformity with Article 1§2 of the Revised Charter on the ground that, during the reference period, the length of alternative service excessively restricted the worker's right to earn a living in an occupation freely entered upon.

Paragraph 3 – Free placement services

The Committee takes note of the information provided in Moldova's report.

The report refers in particular to the adoption, outside the reference period, of an action plan for the National Employment Office, which will have influence on the Office's activities and regional bodies. The Committee asks for the next report to contain information about the main measures introduced and the outcome of their implementation, particularly in terms of positions found for jobseekers.

According to the report, the total number of vacancies recorded by the National Employment Office increased during the reference period from 42,357 in 2005 to 47,501 in 2006. There were 51,837 jobseekers registered with the Office in 2006. The report indicates that services provided by the public employment services are free of charge.

The Committee notes that the placement rate fell significantly during the reference period, from 58.1% in 2005 to 50.2% in 2006. It notes that the placement rate is still low and asks for the Government's comments on this point. The Committee asks again what is the average period of time required to fill a vacancy.

According to the report, the number of regional branch employment offices did not change during the reference period. The public employment services had 243 members of staff in all.

As to private agencies, the report states in reply to the Committee's question that they may only begin operating once they have been issued an authorisation by the Licensing Board, pursuant to Act No. 451-XV of 30 July 2001.

In 2006, a total of 2,100 vacancies were dealt with by private agencies. 6,031 jobseekers made use of the services of 11 private agencies, which found work for a total of 725 people.

The Committee asks for information on the results of co-ordination between public and private agencies.

It asks again what percentage of the market the public employment services cater for – in other words – how many placements it makes compared to total recruitments on the labour market.

The Committee finally notes that, according to the report, representatives of employers' organisations and trade unions sit on the governing board of the National Employment Office. Consultative committees have also been set up to advise regional offices. Furthermore, under a co-operation agreement between the Office and the Confederation of Free "Solidarity" Trade Unions, meetings are held regularly to discuss concerted labour market measures.

Conclusion

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

Paragraph 4 – Vocational guidance, training and rehabilitation

The Committee takes note of the information provided in the Moldova's report.

Under Article 1§4, the Committee considers vocational guidance, continuing training for workers and the rehabilitation of persons with disabilities.

As Moldova has accepted Articles 9 (right to vocational guidance) and 15§1 (right of persons with disabilities to vocational guidance, education and training) of the Revised Charter, the Committee refers to its findings under these articles. It found the situation not

to be in conformity with the Charter under Article 9 on the ground that that it has not been established that equal treatment is guaranteed to all nationals of States Parties. Moreover, it found the situation not to be in conformity with the Charter under Article 15§1 on the ground that there is no legislation explicitly protecting persons with disabilities from discrimination in education and training.

The Committee deals here only with the vocational training of adult workers in view of the fact that Moldova has not accepted Article 10§3 of the Revised Charter. Moldova's report under Article 1§4 contains information relating to the continuing vocational training of unemployed people and workers.

The Committee notes from another source¹ that continuing training for workers may be provided by private or public adult education institutions which must be certified by the Ministry of Education. Funding for these institutions is provided by sponsors, donations and other sources. The Committee asks again what are the requirements for access to these courses and what kind of training is on offer.

As to vocational training for the unemployed, the organisation, running and funding of courses are governed by Act No. 102-XV of 13 March 2003 on the employment and social protection of jobseekers and by Government Decision No. 1080 of 5 September 2003.

In reply to the Committee, the report states that teaching staff are employed on the basis of a recruitment competition held by the adult or II, or higher. The Committee asks how many teachers are employed by the adult education institutions.

According to the report, in 2005, 4,621 unemployed people attended vocational training courses and 3,170 of them subsequently found work. In 2006, 4,629 attended and 3,185 found work. One in every ten unemployed people attends training courses. The Committee notes from another source² that the adult education participation rate is very low and fails to satisfy the workforce's training needs. The Committee asks if the Government is planning measures to increase the participation rate of employed and unemployed persons in vocational training courses.

The Committee notes that in 2006 the budget for vocational training for unemployed people was considerably lower than in 2004. It asks what the reason for this is and asks for the next report to provide up-to-date information on the budget for continuing vocational training for employed and unemployed persons.

In reply to the Committee's question, the report states that there is no length-of-residence requirement for nationals of other States Parties to be entitled to vocational training.

Conclusion

The Committee concludes that the situation in Moldova is not in conformity with Article 1§4 of the Revised Charter on the grounds that:

- it has not been established that equal treatment is guaranteed to all nationals of States Parties;
- there is no legislation explicitly protecting persons with disabilities from discrimination in education and training.

¹ National report on the development of the education system in the Republic of Moldova, www.ibe.unesco.org

² www.etf.europa.eu, Action plan for training in Moldova, 2007

Article 9 – Right to vocational guidance

The Committee takes note of the information provided in Moldova's report.

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

Vocational guidance in the education system

a. Functions, organisation and operation

The Committee reminds that since 2005, the government introduced a series of measures whose aim was to reorganise certain government departments and central administrative offices. As a result, vocational guidance in the education system is provided by a combination of the Ministry of Education, Youth and Sport, the national employment office, the private sector and non-governmental organisations for all those concerned (pupils, students and unemployed young people and adults). The Committee asks 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.

b. Expenditure and numbers of staff and of persons assisted

In its previous conclusion (Conclusions 2005), 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 lack of information, the Committee repeats its question and asks for this information to be provided systematically in each report.

Vocational guidance in the labour market

a. Functions, organisation and operation

Vocational guidance in the labour market is provided by public and private employment agencies. The information in the report only concerns public services operated by the national employment agency and its local offices. In the absence of any answer in the report, the Committee would like to know what proportion of the vocational guidance market is occupied by private employment agencies. If the latter are intensively involved in providing such guidance, the Committee would like the next report to contain information on their operational resources, the cost of their services.

b. Expenditure and numbers of staff and of persons assisted

According to the report, 25,106 persons in 2005 and 27,944 in 2006 benefited from vocational guidance and psychological assistance services provided by the national employment agency. In the absence of information, the Committee asks again for the next report to contain information showing the ratio of the number of persons requesting assistance from the guidance services to the number of persons actually in receipt of such assistance. The Committee underlines that, if the requested information is not included in the next report, there will be nothing to show that the situation is in conformity with the Revised Charter on this point.

The Committee also asks for details of the total budget allocated to vocational guidance, the staffing of vocational guidance services and the minimum qualifications required.

Equal treatment of Nationals of the other States Parties

The Committee previously asked what legislation existed to ensure equal entitlement to vocational guidance for all members of society. In the absence of a reply, the Committee

notes from another source¹ that articles 34§1 and 35§§1, 2 and 3 of the Moldovan Constitution and articles 43 and 47b of the Labour Code provide for equal opportunities and prohibit all forms of discrimination with regard to vocational guidance and training.

Although the Committee put this question in its previous two conclusions (Conclusions 2005 and 2007), the report fails to state whether equal treatment is guaranteed to nationals of other States Parties to the Charter in law and, if so, on what legislation this equality is based. In view of the lack of information, the Committee concludes that it has not been established that all nationals of States Parties are guaranteed equal treatment and hence that the situation is not in conformity in this respect.

Conclusion

The Committee concludes that the situation in Moldova is not in conformity with Article 9 of the Charter on the ground that it has not been established that equal treatment is guaranteed to all nationals of States Parties.

¹ Report of the Committee of Experts on the Application of Conventions and Recommendations, Convention No. 142 on Human Resources Development Convention, 1975, Republic of Moldova (ratification : 2001), <http://webfusion.ilo.org>

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

Paragraph 1– Education and training for persons with disabilities

The Committee takes note of the information provided in Moldova's report.

The Committee reiterates its question (Conclusions 2005) as to 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.

Anti Discrimination legislation

The Committee recalls that under Article 15§1, it “considers necessary the existence of non-discrimination legislation as an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes. Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education. Legislation may consist of general antidiscrimination legislation, specific legislation concerning education, or a combination of the two” (Conclusions 2007 Moldova, Statement of interpretation on Article 15§1).

In its previous conclusion (Conclusions 2007), the Committee had accordingly asked whether discrimination in education on the ground of disability was prohibited by law. The report does not clarify the situation in this regard. Neither does it provide up-dated information on the Code on Education on mainstreaming in ordinary education and special education which was under preparation according to the additional information sent by the Government at the Committee's request in its previous report. The Committee reiterates its requests for clarification.

Education

The Committee refers to its first conclusion for a description of the legal framework established to comply with Article 15§1. It also recalls that in this conclusion it had listed a detailed number of issues it required information on to assess whether disabled persons are guaranteed an effective right to education both in law and in practice. Since the information provided so far only partially responds to its requests, the Committee reiterates all its specific questions on education (Conclusions 2005)

Vocational guidance and training

The Committee refers to its first conclusion (Conclusion 2005) for a description of the situation in law and in practice with regard to vocational guidance and training. It reiterates all its specific questions on the issue, including the request concerning relevant statistics (particularly the number of persons with disabilities integrated into mainstream and special training facilities).

The Committee also further reiterates its question as to whether explicit anti-discrimination legislation for persons with disabilities exists with regard to vocational guidance and training of persons with disabilities and whether it is possible to seek judicial remedy in cases of discrimination.

Conclusion

The Committee concludes that the situation in Moldova is not in conformity with Article 15§1 of the Revised Charter on the ground that there is no legislation explicitly protecting persons with disabilities from discrimination in education and training.

Paragraph 2– Employment of persons with disabilities

The Committee takes note of the information provided in Moldova's report.

Non-discrimination legislation

In its previous conclusion (Conclusions 2007), the Committee concluded that the situation was not in conformity with Article 15§2 of the Revised Charter on the ground that legislation prohibiting discrimination in employment on the ground of disability was not adequate. No new information in this regard is provided in the report and the Committee therefore finds that the situation is still not in conformity with Article 15§2 of the Revised Charter.

In this context, the Committee particularly highlights that under Article 15§2 non-discrimination legislation must provide for the adjustment of working conditions (reasonable accommodation) in order to guarantee the effectiveness of non-discrimination legislation in the field of employment (Conclusions 2007 Moldova, Cyprus).

To assess whether the right to non-discrimination in employment is effectively guaranteed for persons with disabilities in Moldova, the Committee asks the next report to indicate:

- whether there is an obligation for the employer to adjust working conditions,
- how reasonable accommodation is implemented in practice,
- whether there is case law on the issue and whether reasonable accommodation has prompted an increase in employment of persons with disabilities in the open labour market,
- what remedies are available for those who have been subject to discriminatory measures, including dismissal.

Measures to promote employment

As to measures in place to encourage employers to hire and keep in employment persons with disabilities, since the information provided so far only partially responds to its requests (Conclusions 2005), the Committee reiterates its detailed questions in this regard.

In this context, the Committee also recalls that “there must be obligations on the employer to take steps in accordance with the requirement of reasonable accommodation to ensure effective access to employment and to keep in employment persons with disabilities, including persons who have become disabled while in their employment as a result of an industrial accident or occupational disease” (Conclusions XVIII-2, Statement of Interpretation on Article 15§2). The Committee requests the next report to indicate what steps employers may take in practice in this regard.

The report provides figures concerning persons with disabilities having applied to employment agencies and the corresponding placement outcome. These reveal an increase in demand (222 persons in 2005 and 360 in 2006) but a decrease in placement (26 % in 2005 and only 11.4 % in 2006). Moreover, if these figures are read in conjunction with those concerning the total number of persons with disabilities,¹ it appears that only a very low percentage addressed the employment agencies. The Committee requests the next report to inform it about any steps taken with a view to raising awareness about

¹ See the table on pp. 24-25 of Moldova's report.

existing facilities to access employment for persons with disabilities as well as any other measure taken to improve placement arrangements for them.

In this regard, the Committee asks the next report to provide up-dated information on the planned amendments to Law No. 102-XV of 13 March 2003 on the employment and social protection of persons searching for a job and the corresponding Governmental Decrees to facilitate placement arrangements for persons with disabilities.

Conclusion

The Committee concludes that the situation in Moldova is not in conformity with Article 15§2 of the Revised Charter on the ground that legislation prohibiting discrimination in employment on the ground of disability is inadequate.

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

Paragraph 3 – Liberalising regulations

The Committee takes note of the information provided in Moldova's report.

New migration legislation is being drawn up, covering such matters as the conditions for the issue, extension and withdrawal of work permits for foreign nationals and the rules governing the settlement of Moldovan citizens abroad with or without the help of an intermediary. The Committee asks for information in the next report on any provisions of the new legislation that are relevant to Article 18 of the Revised Charter.

Access to the national labour market

It refers to its previous (Conclusions 2007) conclusion for a detailed description of the rules governing the employment of foreign nationals. In this respect, the Committee recalls that, to enter the labour market, foreign nationals require an immigration certificate and a work permit. The government lays down an annual quota for immigration certificates, which may not exceed 0.5% of the total number of permanent residents. The Committee has already pointed out this quota to be highly restrictive and asks whether there any plans to liberalize it.

Immigration certificates are temporary or permanent. Temporary certificates are issued for a period of up to one year and may be renewed each time for a further year. Permanent certificates are issued to certain categories of workers, including ones whose occupations are in special demand in the country, highly qualified specialists invited by the government on the recommendation of central government departments and immigrants entering Moldova for the purposes of family reunion.

The same principles govern the issuing of work permits. Thus, permanent work permits are issued to the aforementioned categories of workers holding permanent immigration certificates. The Committee asks whether the latter are the only group of foreign nationals who are eligible for permanent work permits or whether ones who have had a temporary permit for several successive periods may be eligible for a permanent work permit after a certain lapse of time.

The report points out that work permits are issued by the National employment agency and not by the department of migration. It also appears that applications for work permits must be made by employers, and not by foreign workers. The Committee asks for clarification on these points.

It again notes that appeals against refusals to grant work permits may be lodged with the administrative courts.

The Committee asks whether foreign nationals are allowed to operate as self-employed persons in Moldova and if so what are the rules concerning the issuing of work permits for such activities.

Exercise of the right of employment/consequences of job loss

In reply to the Committee, the report says that work permits are only valid for the employer making the application. When foreign workers lose their job, employers must return the relevant authorisations to the departments concerned so that they can be withdrawn. In such circumstances, there is no provision in the legislation for immigration certificates to be extended and any foreign worker concerned can only be recruited by another employer if the latter applies to the National employment agency for a work permit. The Committee infers from this that the "authorisations" referred to in the report are the immigration certificate and the work permit. If this is the case, foreign workers who have lost their jobs would be deprived of any documents to justify their stay, which would mean that they were

in the country illegally and could be obliged to leave. The Committee asks for the next report to provide more detailed information on this subject.

It recalls that loss of a job must not lead to the cancellation of a residence permit, which would oblige the individual concerned to leave the country as soon as possible. In such cases, under Article 18 of the Revised Charter the validity of the residence permit should be extended to provide sufficient time to find new work (Conclusion XVII-2, Finland). The Committee also recalls that regulations that limit the right to enter gainful employment to a specified job and a specified employer cannot be deemed to be in conformity with Article 18 of the Revised Charter. Making employees dependent on one employer, with the threat if they lose their jobs of being obliged to leave the host country, is such an infringement of individual freedom that it cannot be considered to reflect a spirit of liberality or flexible regulations (Conclusions II, statement of interpretation of Article 18).

Conclusion

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

Paragraph 4 – Right of nationals to leave the country

The Committee takes note of the information provided in Moldova's report.

It recalls that the Moldovan Constitution grants Moldovan citizens the right to leave their country, subject to certain restrictions under section 12 of the Migration Act – which the Committee has found to be in conformity with the Revised Charter in previous conclusions – and in other legislation. In this connection, according to the report, under the legislation on entering and leaving Moldovan territory, it may be decided to refuse to issue or to extend the validity of a passport if the applicant:

- i. poses a threat to national security;
- ii. has committed a crime against humanity;
- iii. is serving a sentence imposed on him or her by the courts or is being criminally prosecuted;
- iv. has broken the rules on the import, export or transit of substances or objects to which restrictions are applied;
- v. is serving in foreign or mercenary armed forces;
- vi. has knowingly made false statements about his or her identity or personal details;
- vii. owes money to the State, corporate bodies or private persons, as confirmed by a court decision.

According to the report, for whatever reason a restriction is imposed, the reasons for the decision must be documented and the decision is open to appeal in the administrative courts.

The Committee notes that the restrictions listed in sub-paragraphs (iii) to (vii) are the same as those referred to in section 12 of the Migration Act mentioned above. It considers that the other restrictions are *prima facie* among those authorised by Article G of the Revised Charter. However, the Committee asks for the next report to describe the exact content and scope of these restrictions, particularly those referred to in sub-paragraphs (i) and (iv). It also asks if Moldovan citizens may be prevented from leaving the country for any other reasons than those mentioned above.

The Committee recalls that the authorities may also refuse to issue nationals with a passport if the latter are required to perform military service.

It points out again that intermediaries involved in the placement of citizens abroad must hold a special licence for the purpose issued by the state; the placement of Moldovan

citizens abroad is based on individual employment contracts concluded between the citizen personally or via an intermediary and the foreign employer, which must be presented to the Immigration Service before the employee leaves the country. The Committee asks for confirmation that citizens are free to seek work abroad without the involvement of placement agencies.

Conclusion

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

Article 20 – Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

The Committee takes note of the information provided in Moldova's report.

New legislation on gender equality was adopted during the reference period, Law No. 5-XVI of 9 February 2006. The law defines discrimination on grounds of sex, sexual harassment positive action etc and provides for special measures in order to promote equality.

The report provides no further new information (apart from up to date figures on the employment and unemployment of women), in particular it fails to respond to the questions put by the Committee in its previous conclusion (Conclusion 2006).

The Committee recalls that should the required information not be provided in the next report there will be nothing to show that the situation is in conformity with Article 20 of the Revised Charter.

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

Article 24 – Right to protection in cases of termination of employment

The Committee takes note of the information provided in Moldova's report.

Scope

The Committee has examined the situation as regards the scope of the provisions under Moldovan law guaranteeing the right to protection in cases of termination of employment in its previous conclusion (Conclusions 2005) and found the situation to be in conformity with Article 24 of the Revised Charter.

Obligation to provide a valid reason for termination of employment

As regards the valid reasons for termination of employment contracts as stipulated in Section 86 para (1) of the Labour Code, the Committee asked in its Conclusions 2005 Moldova for clarification on how certain reasons for dismissals were to be interpreted in practice and reiterated such request in its Conclusions 2007 Moldova. The Committee notes the information provided in this respect in the report and asks for confirmation that the interpretation as set out in the report corresponds to and is drawn from existing case law of the labour courts in dismissal cases.

In reply to the Committee's question, the report specifies that in all the cases covered by Section 86 para (1) of the Labour Code the employers must specify the ground for the dismissal in the notification.

The Committee further notes that Section 82 of the Labour Code as amended in 2006 provides for the termination of employment of the managing director of a State enterprise or an enterprise in which the state is a majority shareholder once he/she reaches 65 years of age. After having reached retirement age these former managing directors may be employed on employment contracts having a limited duration of up to two years but not in the capacity of managing director.

The Committee holds that dismissal on the grounds of age will not constitute a valid reason for termination of employment unless a termination is, within the context of national law, objectively and reasonably justified by a legitimate aim such as legitimate employment policy, labour market objectives or the operational requirements of the undertaking, establishment or service and provided that the means of achieving that aim are appropriate and necessary.

The Committee asks in this context how retirement ages (mandatory retirement ages set by statute, contract or through collective bargaining) and pensionable age (age when an individual becomes entitled to a state pension) are fixed in Moldova and what is the consequence on the employment relationship once an employee has reached retirement and/or pensionable age. The Committee asks in particular whether the law prescribes or provides for termination of the employment relationship on the grounds that an employee has reached the retirement age and whether there are specific procedures to be followed or conditions to be fulfilled once an employee reaches the retirement age or whether employees who reach this age are automatically dismissed.

Prohibited dismissals

The Committee examined the situation as regards reprisal dismissals in its previous conclusion (Conclusions 2005). As regards termination of employment on the ground of absence from work due to illness the Committee notes from Section 86 para (2) of the Labour Code that dismissal of a worker during his sick leave is prohibited and the Committee asks the next report to specify whether this applies to any case of temporary absence from work due to illness or injury (see the Appendix to Article 24).

Remedies and sanctions

The Committee noted that under Section 352 of the Labour Code it appears that in general the burden of proof in proceedings before the labour courts is shared between the parties. It asks the next report to specify with which party lies the burden of proof in proceedings regarding unfair dismissals.

Conclusion

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