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## **European Social Charter**

European Committee of Social Rights

Conclusions 2016

**REPUBLIC OF MOLDOVA**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

The following chapter concerns the Republic of Moldova, which ratified the Charter on 8 November 2001. The deadline for submitting the 12th report was 31 October 2015 and the Republic of Moldova submitted it on 7 May 2016. The Committee received on 22 December 2015 observations from the International Organisation of Employers (IOE) expressing its perspective on the application of Article 24.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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 all provisions from the above-mentioned group except Articles 10, 15§1, 18§1, 18§2, 18§5 et 25.

The reference period was 1 January 2011 to 31 December 2014.

In addition, the report contains also information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to organise (Article 5),
- the right to bargain collectively – negotiation procedures (Article 6§2),
- the right to bargain collectively – collective action (Article 6§4),
- the right to dignity in the workplace – moral harassment (Article 26§2),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28).

The conclusions relating to the Republic of Moldova concern 16 situations and are as follows:

– 5 conclusions of conformity: Articles 1§3, 15§1, 18§4, 24 and 26§2

– 9 conclusions of non-conformity: Articles 1§1, 1§2, 1§4, 6§4, 9, 15§2, 18§3, 20 and 28

In respect of the other 2 situations related to Articles 5 and 6§2 the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by the Republic of Moldova under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

#### **Article 15**

- Legislation to ensure equality was enacted on 25 May 2012 and came into force on 1 January 2013. It prohibits all forms of discrimination, including discrimination based on disability, and applies to all individuals and legal persons in the public and private domains.

The next report will deal with the following provisions of the thematic group "Health, social security and social protection":

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 23),
- the right to protection against poverty and social exclusion (Article 30).

The report should also contain information requested by the Committee in Conclusions 2015 in respect of its findings of non-conformity due to a repeated lack of information:

- the right of children and young persons to protection – prohibition of employment of children subject to compulsory education (Article 7§3),
- the right of employed women to protection of maternity – maternity leave (Article 8§1),
- the right of the family to social, legal and economic protection (Article 16).

The deadline for submitting that report was 31 October 2016.

Conclusions and reports are available at [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**

According to the National Bureau of Statistics, the GDP growth rate decreased from 6.8% in 2011 to – 0.7% in 2012 before increasing sharply to 9.4% in 2013 before decreasing again to 4.8% in 2014.

According to the report, the overall employment rate remained practically stable (2011 – 39.4%; 2014 – 39.6%) during the reference period.

The male employment rate remained stable at 42.1% and the female employment rate practically stable (2011; 37.1% – 2014; 37.4%).

According to the National Bureau of Statistics, the unemployment rate decreased from 7.4% in 2011 to 5.1% in 2014. The youth unemployment rate (% of active population aged 15 – 24) decreased during the reference period from 17.8% in 2011 to 12.2% in 2014.

For the next report, the Committee requests information on the employment rate of older workers as well as on the long-term unemployment rate (% of active population aged 15-74).

The Committee notes that the economic situation remains unstable. The GDP featured rather fragile despite the relatively high 2013 and 2014 growth rates. However, these GDP growth rates had no positive impact on the employment rate even though the unemployment rate stood with 5.1% at a rather low level and the youth unemployment rate declined by more than 5.0% during the reference period.

### **Employment policy**

The National Strategy in place to implement the necessary labour market policies covers the period 2007 – 2015 meaning the last two reporting cycles. Likewise, active labour market measures are still guided by the law on employment and social protection of persons seeking a job (Law No. 102-XV of 13 March 2003). During the reference period, specific plans contained measures to support a number of vulnerable groups such as young persons, the Roma population or people with disabilities. However, the information provided is not supported with relevant statistical data. The Committee requests that in the next report these statistical data are provided,

According to the report, public expenditure on active labour market policies amounted to 0.02% of GDP in 2014, which is by international comparison very low.

The Committee notes that the report fails to provide the requested data on the overall activation rate as well as the information on the evaluation of the applied employment policies.

The Committee notes that labour market policies have not been sufficient to reduce the unemployment rate and to create jobs. Therefore, the situation is not in conformity with Article 1§1 of the Charter.

### *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 employment policy efforts have not 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**

In its previous conclusion, the Committee sought further information on the indirect discrimination and concluded that the situation was not in conformity with Article 1§2 of the Charter on grounds that (i) it has not been established that discrimination on the ground of age is prohibited; (ii) discrimination on the ground of sexual orientation is not prohibited; (iii) nationals of other States Parties do not have access to civil service jobs (Conclusions 2012).

The Committee takes note from the report and ILO-CEACR Observations of the adoption of Law No. 121 of 25 May 2012 on Ensuring Equality, which aims to prevent and combat discrimination and ensure equality of all persons in the country irrespective of race, colour, nationality, ethnic origin, language, religion or belief, sex, age, disability, opinion, political affiliation, or any other similar criterion (Section 1(1)). The Law defines and prohibits both direct and indirect discrimination (Section 2), as well as the worst forms of discrimination, which include discrimination based on two or more protected grounds (section 4). Section 7 of the same Law specifically prohibits discrimination in employment based on the above grounds, and adds the additional ground of sexual orientation (Observation (CEACR) – adopted 2014, published 104th ILC session (2015), Discrimination (Employment and Occupation) Convention 1958 (No. 111)).

The Committee also notes from the Report of the Governmental Committee concerning Conclusions 2012 that the representative of Moldova stated that there was draft legislation before parliament to amend Article 8 of the Labour Code so that explicitly include sexual orientation as a prohibited ground of discrimination (Report concerning Conclusions 2012 of the European Social Charter GC(2013)25). The Committee asks information on any developments with regard to this draft law.

As for discrimination on grounds of age, the report indicates that age is expressly provided as one of the prohibited grounds of discrimination in employment by Article 8 of the Labour Code.

The Committee asks how the prohibition of discrimination in employment on grounds of age and sexual orientation have been implemented into practice and examples of discrimination cases dealt with by the courts in this sense.

The Committee further notes that “skin colour” and “HIV/AIDS infection” have been added to the list of prohibited grounds of discrimination enumerated in section 8 of the amended Labour Code, brought into effect by Law No. 168 of 9 July 2010. It also notes that section 10(2)(f1), (f2) and (f4) imposes obligations on employers to ensure equal opportunity and treatment of all employees without discrimination, to apply the same criteria to assess each employee’s work and to ensure equal conditions for men and women relating to work and family obligations.

With regard to implementation, the Committee notes that the Law No. 121 of 25 May 2012 on Ensuring Equality further provides for a Council to Prevent and Combat Discrimination and Ensure Equality responsible for reviewing complaints of discrimination and making recommendations. The Committee asks information on its activity and on the number of complaints related to discrimination in employment received and the outcome of such complaints. It also asks whether the Council is competent to impose sanctions on employers and to grant compensation to victims.

With regard to compensation granted to victims of discrimination, the Committee noted previously that there is no upper limit on compensation in cases of discrimination (Conclusions 2012). The Committee requests that the next report provide information on cases of discrimination in employment dealt with by courts, with specific indications regarding their nature and outcome, sanctions imposed on the employers and compensation granted to the employees.

The Committee concluded previously that the situation was not in conformity with the Article 1§2 of the Charter on the ground that nationals of other States Parties do not have access to civil service jobs. It noted that civil service jobs are reserved for Moldovan nationals and this is an excessively broad restriction (Conclusions 2012). The report indicates that under the Law on the Public Service, the Moldovan citizenship is required for all those who are employed as civil servants. According to the report the civil servants perform activities which involve the exercise of public authority. However there are other posts in the public service which do not require the exercise of public authority such as persons performing activities of secretariat, protocol, IT and administration, and which are open to other nationals. The representative of the Republic of Moldova to the Governmental Committee stated that there are bilateral agreements allow non- nationals to work in the public service (Report of the Governmental Committee concerning Conclusions 2012).

The Committee understands that there is a total ban for foreign nationals to access civil servants posts and this prohibition does not concern only those posts/positions which are inherently connected with the protection of the public interest or national security and involve the exercise of public authority. It recalls that under Article 1§2 of the 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 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 therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority (Conclusions 2012, Albania). It therefore notes that the situation in the Republic of Moldova has not changed and it is still not in conformity with Article 1§2 of the Charter on this point.

## ***2. Prohibition of forced labour***

The Committee previously concluded that the situation in the Republic of Moldova was not in conformity with Article 1§2 of the Charter on the ground that exceptions to the general prohibition of forced labour were too wide, in particular because this prohibition did not apply to work forming part of ordinary civic duties (Conclusions 2012). According to the report Moldovan legislation does not provide a definition of the concept of "normal civil obligations" as they appear in the Labour Code. Nevertheless, Article 7 of the Labour Code, which lists exceptions to the general prohibition of forced labour, draws on the provisions of Convention 29 of the ILO on forced or compulsory labour, which the Republic of Moldova ratified in 1999. The expression "normal civil obligations", which is based on Article 2 para. 2 (e) of the ILO Convention, should therefore be interpreted in line with the meaning given to it in that Convention. The report also points out that the international treaties ratified by the Republic of Moldova are directly applicable in the Moldovan legal system (Art. 20 of Law No. 595-XIV du 24 September 1999 on international treaties).

The Committee takes note of this information and considers that the situation is in conformity with Article 1§2 of the Charter on this point.

### ***Work of prisoners***

The Committee examined the legal framework relating to prison work in the Republic of Moldova in its Conclusions 2012. Referring to its Statement of Interpretation on Article 1§2 on prison work (Conclusions 2012), it asks that the next report contain updated information on the social protection of prisoners (employment injury, unemployment, health care and old age pensions).

### ***Domestic work***

In its previous conclusion, the Committee referred to its Statement of Interpretation on Article 1§2 with regard to the existence of forced labour in the domestic environment. As the current report does not provide any information on the legal measures adopted to combat this type of forced labour or on the measures taken to apply them and to monitor their application, the Committee reiterates its request that the next report contain the necessary information on this point.

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

### ***Minimum periods of service in the Armed Forces***

In its previous conclusion (Conclusions 2012), the Committee pointed out that in its previous conclusion (Conclusions 2012), the Committee pointed out that any minimum period of service in the armed forces must be of a reasonable duration and in cases of longer minimum periods due to education or training that an individual has benefited 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. As the current report fails to provide any information on the situation in the Republic of Moldova from this point of view, the Committee asks that the next report provide updated information on the impact of studies or training courses followed by soldiers on the duration of their service in the armed forces and on the possible financial repercussions of early termination of service.

### ***Requirement to accept the offer of a job or training***

The Committee notes that the current report does not answer the questions raised in its Statement of Interpretation on Article 1§2 in the general introduction (Conclusions 2012) concerning the requirement to accept an offer of a job or training. The Committee therefore reiterates its request that the next report include the necessary information on the points raised in the Statement of Interpretation, in particular on the remedies that may be used to challenge the decision to suspend or withdraw unemployment benefits. The Committee points out that should the next report fail to provide the information requested, there will be nothing to establish that the situation is in conformity with Article 1§2 of the Charter with regard to the requirement to accept a job offer or training or otherwise lose entitlement to unemployment benefit.

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

In its previous conclusion, the Committee referred to its Statement of Interpretation of Article 1§2 on workers' right to privacy in which it pointed out that the right to earn one's living in an occupation freely entered upon included the right to be protected against interference in one's private life. As the current report does not provide any information on this point, the Committee asks that the next report provide information on the measures taken by the Government to ensure that, when organising working hours, employers take due account of their employees' right to a private life and to ensure that any interference in their private life is forbidden and, where appropriate, penalised.

### *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 ground that restrictions to the employment of nationals of other States Parties in the civil service are excessive which constitutes a discrimination on grounds of nationality.

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

### *Paragraph 3 - Free placement services*

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

The Committee takes note of the principal competences of the National Employment Agency (ANE) under Act No. 102-XV of 13 March 2003 on employment and social protection of job-seekers. It notes that employment services may also be provided by private agencies. It asks that the next report contain information on the respective market shares of public and private agencies. The market share is the number of placements compared to total recruitments in the labour market.

In its previous conclusions (Conclusions 2012), the Committee requested information on the number of counsellors working within ANE, the proportion of staff assigned to placement activities and the number of job-seekers for whom each placement counsellor is responsible. The Committee could not find this information in the report, which merely states that, in addition to the regional employment agencies, information services are also provided by information centres located in the agencies in Chişinău, Bălţi and Cahul. The Committee asks that the information requested be provided in the next report.

In its previous conclusions, the Committee also asked that the next report provide updated information on both the number of placements and the number of vacancies notified to the employment services. In this connection, the report states that the total number of job-seekers fell during the reference period from 67,254 in 2011 (81,523 in 2010) to 42,166 in 2014. However, total vacancies increased from 28,250 in 2011 to 41,536 in 2014. The number of placements rose slightly, from 13,548 in 2011 to 16,366 in 2014. On the basis of these figures, the placement rate fell from 48% in 2011 to 39% in 2014.

### *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.

Article 1§4 guarantees the right to vocational guidance, continuing vocational training for employed and unemployed persons and specialised guidance and training for persons with disabilities. It is complemented by Articles 9 (right to vocational guidance), 10§3 (right of adult workers to vocational training) and 15§1 (right of persons with disabilities to vocational guidance and training), which contain more specific rights to vocational guidance and training.

As the Republic of Moldova has not accepted Article 10§3, the Committee assesses under Article 1§4 the conformity of the situation relating to the right of adult workers to vocational training.

### ***Equal treatment***

The Committee found previously (Conclusions 2008) that vocational guidance and training were accessible to foreign nationals of other States Parties under Law No. 102-XV of 13 March 2003 on the employment and social protection of jobseekers, as amended, which covers foreign nationals or stateless persons who have a permanent or temporary residence permit.

### ***Vocational guidance***

With regard to measures relating to vocational guidance, the Committee refers to its assessment under Article 9, in which it finds that the situation is not in conformity with the Charter on the ground that it has not been established that the right to vocational guidance in the education system and the labour market is guaranteed. Accordingly, the Committee considers that the situation is not in conformity with Article 1§4 on the same ground.

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

In its previous conclusion (Conclusions 2012), the Committee found, among other things, that it had not been established that continuing vocational training services operated in an efficient manner.

With regard to training for unemployed persons, the report refers to the free training courses organised by the National Employment Agency for jobseekers registered with local agencies (Article 25 of Law No. 102-XV on employment and social protection of jobseekers) and points out that the training programmes on offer provide training, retraining and skills improvement for unemployed persons while taking account of individual abilities and labour market requirements.

It also describes some of the measures taken to encourage people to take part in these training courses:

- firstly, since 1 July 2011, unemployed persons attending vocational training courses who do not receive unemployment or vocational integration or reintegration benefits have been entitled to a monthly tax-free grant for the training period, amounting to 10% of the national average wage for the year preceding the date of payment;
- secondly, measures have been taken to raise awareness of training courses through information centres, the website [www.anofm.md](http://www.anofm.md), signs, leaflets and other information material, seminars, etc.

According to the report, the number of unemployed persons completing vocational training courses increased during the reference period from 2 235 in 2011 to 2 884 in 2014. The

expenditure incurred also increased from 8 298 400 MDL (€429 262 at the exchange rate of 31/12/2014) in 2011 to 14 225 300 MDL (€735 850) in 2014.

With regard to continuing training of employed persons, the report does not answer the Committee's questions (in Conclusions 2012) on the overall participation rate in continuing vocational training, the percentage of companies which offer in-house training or other types of vocational training to their employees and the conditions for access to these training courses.

The Committee takes note, however, of the information presented to the Governmental Committee (Governmental Committee Report concerning Conclusions 2012), which describes the legislation on adult education and its various forms. In particular, it notes that the law authorises ministries, departments, companies and other bodies, working with teaching institutions or on their own, to hold adult vocational training or retraining courses for their own employees or future employees and for unemployed persons. The employee's right to vocational training is recognised by Part III of the Labour Code, which sets out the employer's obligations in this respect (including the obligation to allocate at least 2% of the company's staff budget to training). Other measures relating to continuing vocational training which the authorities mention are: the strategic document on vocational guidance, training and instruction for staff (approved by Parliamentary Decision No. 253-XV of 19 June 2003); the Regulation on the organisation of continuing vocational training (approved by Government Decision No. 1224 of 9 November 2004); and the "Moldova 2004" National Development Strategy (approved by Law No. 166 of 11 July 2012).

According to the information presented to the Governmental Committee (Governmental Committee Report concerning Conclusions 2012), the number of workers on continuing vocational training courses increased in recent years, rising from 10% in 2010 to 12% in 2012 (70 892 workers out of 589 818 in 5 720 companies). In 2012 the number of administrators, experts and civil servants on vocational training courses rose to 53 368, of whom 24 624 (46.1%) were trained in teaching establishments, 22 858 (42.8%) within companies, 3 448 (8.5%) abroad and 1 739 (3.3%) on vocational training courses organised by international organisations. According to the same information, 17 524 other workers attended training courses in 2012, and 62.7% of these did so within companies, 32.9% in national institutions and 0.6% abroad.

The Committee takes note of this information and considers that the situation is in conformity with Article 1§4 on this point. It asks for up-to-date information in the next report on the participation rates for continuing vocational training programmes for employed and unemployed persons during the reference period.

### ***Guidance and vocational training for persons with disabilities***

With regard to measures concerning vocational guidance and training for persons with disabilities, the Committee refers to its assessment under Article 15§1, in which it finds that the situation is in conformity with the Charter.

#### *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 in the education system and the labour market is guaranteed.

## Article 5 - Right to organise

In application of the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on conclusions of non-conformity for repeated lack of information in Conclusions 2014.

The Committee takes note of the information submitted by the Republic of Moldova a in response to the conclusion that it has not been established that that compensation and penalties are provided for by law in case of discrimination based on trade union membership; and it has not been established that the national law is applied in such a way that it does not impair the freedom to register a trade union (Conclusions 2014, Moldova).

Under Article 5 trade union members must be protected from any harmful consequence that their trade union membership or activities may have on their employment, particularly any form of reprisal or discrimination in the areas of recruitment, dismissal or promotion because they belong to a trade union or engage in trade union activities (Conclusions 2010, Moldova) Where such discrimination occurs, domestic law must make provision for compensation that is adequate and proportionate to the harm suffered by the victim ( Conclusions 2004 Bulgaria). Further under Article 5 trade unions and employer organisations must be free to organise without prior authorisation, and initial formalities such as declaration and registration must be simple and easy to apply. There must also be provision in domestic law for a right of appeal to the courts to ensure that all these rights are upheld (Conclusions XVI-1 (2000), United Kingdom).

The Committee has previously noted (Conclusions 2006) that section 6 of the Law on Trade Unions prohibits recruitment, dismissal or promotion based on trade union membership or participation in its activities. In a previous conclusion the Committee recalled that domestic law must also make provision for compensation which is adequate and proportionate to the harm suffered by the victim and asked for precise information on the existence of such compensation, pending which it could not establish that the situation was in conformity with Article 5.

The current report provides information on penalties to be imposed for breaching the prohibition on discrimination, as well as on compensation that may be awarded in cases of discrimination, there are no limits on the amount of compensation that may be awarded.

The Committee recalls that in order to ensure or promote the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interest and to join those organisations under Article 5, the Governments undertake to ensure that national law shall not be such as to impair, nor shall it be applied in such a way as to impair this freedom. The Committee previously noted that the Ministry for Justice had refused to register the Trade Union of Public Administration and Civil Service Staff (USASP) and the Supreme Court has upheld the refusal of the Ministry of Justice to register it. The Committee noted that the USASP has applied for registration several times, which has repeatedly been denied (Conclusions 2014).

In light of the above mentioned information, the Committee previously considered that the situation is not in conformity with Article 5 of the Charter as it cannot be established that the national law has been applied in such a way that it does not impair the freedom to register a trade union

The report again states that there is nothing to stop the USAP from again requesting registration, it states that no recent request for registration has been made. It further points out that there exists another trade union which represents public servants- *Federation of Trade unions in the public services*. It also states that since 2009 22 new trade unions have been registered.

The Committee asks for information on the grounds on which the Ministry of Justice may refuse to register a trade union, and in particular the grounds on which it refused to register the USAP, as well as information on the decision of the Supreme Court upholding the decision. Meanwhile it defers its decision.

*Conclusion*

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

## **Article 6 - Right to bargain collectively**

### *Paragraph 2 - Negotiation procedures*

In application of the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on conclusions of non-conformity for repeated lack of information in Conclusions 2014.

The Committee takes note of the information submitted by Moldova in response to the conclusion that it had not been established that voluntary negotiations between employers or employers' organisations and workers' organisations are promoted in practice (Conclusions 2014, Moldova).

Under Article 6§2 domestic law must recognise that employers' and workers' organisations may regulate their relations by collective agreement. If necessary and useful, i.e. in particular if the spontaneous development of collective bargaining is not sufficient, positive measures should be taken to facilitate and encourage the conclusion of collective agreements (Conclusions I, (1969), Statement of Interpretation).

The report states that support has been given to employers by the Ministry for Labour, Social Protection and the Family in order to encourage them to create organizations that can negotiate territorial collective agreements. As a result of the efforts, according to the report, territorial commissions for consultation and collective negotiations have been established in the regions of the country (32 commissions).

The Committee asks the next report to provide updated information on the number of collective agreements in force and the number of employees (approximately) covered by collective agreements.

### *Conclusion*

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

## **Article 6 - Right to bargain collectively**

### *Paragraph 4 - Collective action*

In application of the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on conclusions of non-conformity for repeated lack of information in Conclusions 2014.

The Committee takes note of the information submitted by Moldova in response to the conclusion that it had not been established that the restrictions to the right to strike of the employees of the customs authorities comply with the conditions established by Article G of the Charter (Conclusions 2014, Moldova).

The right to strike may be restricted provided that any restriction satisfies the conditions laid down in Article G which provides that restrictions on the rights guaranteed by the Charter that 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 (Conclusions X-1 (1987), Norway (regarding Article 31 of the Charter).

Prohibiting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health (Conclusions I (1969), Statement of Interpretation on Article 6§4, Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" and European Trade Union Confederation (CES) v. Bulgaria, Complaint No. 32/2005, Decision on the merits of 16 October 2006, §24).

However, simply banning strikes even in essential sectors – particularly when they are extensively defined, i.e. "energy" or "health" – is not deemed proportionate to the specific requirements of each sector. At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4 (Conclusions XVII-1 (2004), Czech Republic).

The Committee previously noted that employees of the customs authorities of a particular grade are also denied the right to strike (Conclusions 2006, Conclusions 2010). It asked whether the duties and functions of the employees concerned, given their nature or level of responsibility, are directly related to national security or the protection of public order (Conclusions 2014).

The report simply states that the Committee's conclusions regarding restrictions on the right to strike will be examined by a tripartite group, and then the Committee will be informed of any developments. As there have been no changes to the situation the Committee is obliged to reiterate its previous conclusion.

### *Conclusion*

The Committee concludes that the situation in Moldova is not in conformity with Article 6§4 of the Charter on the grounds that it is not established that the restrictions to the right to strike of the employees of the customs authorities fall within the limits of Article G of the Charter.

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

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

It previously noted (Conclusions 2012) that vocational guidance was also available to citizens of other States parties, pursuant to Law no. 102-XV of 13 March 2003 on Employment and Social Protection of Jobseekers, as amended, which includes as beneficiaries foreign citizens or stateless persons holding a permanent or temporary residence permit. The report confirms that this is still the case and states that this equal treatment also applies with regard to guidance given within the education system.

The report indicates that information in respect of vocational guidance is disseminated by the National Employment Agency and its local branches via various means, such as radio and television programmes, the print media, leaflets and brochures published each year, not forgetting the agency's Internet portals, [www.anofm.md](http://www.anofm.md) and [www.angajat.md](http://www.angajat.md), and the social networks.

As to vocational guidance for persons with disabilities, whether in the education system or the labour market, the Committee refers to its assessment on this point under Article 15 of the Charter.

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

The report reiterates the information provided in the previous report (see Conclusions 2012), namely that vocational guidance within the education system is governed by 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, and the Decision of Parliament No. 253-XV of 19 June 2003, approving the fundamental standards on 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 the Family, and the National Employment Agency, in cooperation with other ministries, departments and local government agencies and enterprises, taking into consideration also the opinion of the social partners and NGOs.

According to the report, schools organise seminars and training sessions for students of the higher classes, during which the National Employment Agency can, on request, provide information on further education possibilities and labour market demands. To this end, each year the agency draws up projections of labour market developments and a barometer of occupations, which analyse labour market trends and identify the occupational profiles most and least sought after within the labour market, based on unemployment figures per type of training or occupation. However, the report gives no details on the number of seminars of this kind held, the number of trainers and their qualifications, the number of students concerned, any measures taken to offer guidance within higher education, and so on. Nor does it say anything about the budgetary resources allocated to these initiatives, with specific regard to Vocational guidance within the education system.

The Committee reiterates that Article 9 of the Charter requires that vocational guidance must be guaranteed within the education system (information on training and access to training) and within the labour market (information on vocational training and retraining, career planning, etc.) and that it must be provided:

- free of charge;
- by qualified (counsellors, psychologists and teachers) and sufficient staff;
- to a significant number of persons, attempting to reach the widest possible audience;

- and by allocating sufficient budget resources.

The Committee repeats its request for information concerning the current organisation of vocational guidance within education establishments, the number of staff allocated to each task and their qualifications, the number of beneficiaries (pupils / students) and the amount of funding allocated. It reiterates that up-to-date information on these items must be systematically provided in all reports concerning the implementation of Article 9 of the Charter. Due to the repeated lack of the requested information, it considers that there is still nothing to show that the right to vocational guidance within the education system is guaranteed.

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

The report refers to Law No. 102-XV of 13 March 2003 on Employment and Social Protection of Jobseekers as the legal basis for vocational guidance in the labour market. In this context it also mentions the "Fundamental standards on professional guidance, training and instruction of human resources", approved under the Decision of Parliament No. 253-XV of 19 June 2003, and the "Regulation of professional guidance and psychological support of the population in the field of careers", approved under Government Decision No. 450 of 29 April 2004.

The Committee previously noted that the National Employment Agency provides vocational information and consultation services free of charge to jobseekers registered with its local branches. Beneficiaries can obtain information on labour market developments; an assessment of their skills, interests and motivations with a view to determining their choice of occupation or developing their skills; information on job search techniques and assistance in this field and advice on career related decisions. The Committee asks that the next report clarify whether vocational guidance services are offered to persons who already have a job but wish to advance their careers or to change jobs.

The report indicates that the vocational guidance services offer is managed by the local branches or the information centres, via individual counselling or collective counselling sessions organised in the context of "jobs clubs" or via seminars. Some activities are also implemented by the Public Employment Service. The Committee asks that the next report provide clearer, more detailed information on the respective responsibilities of the National Employment Agency and the Public Employment Service with regard to vocational guidance and on any activities organised in this sector by other operators.

According to the report, the number of persons registered as unemployed and benefiting from vocational guidance services increased from 48 859 in 2011 to 55 800 in 2014. The total number of beneficiaries was, however, 67 900 in 2014, whereas, according to the information provided to the Governmental Committee (Report to the Governmental Committee concerning Conclusions 2012), they numbered 69 660 in 2012 (including 25 081 young people between 16 and 29 years old), as regards information and counselling services, and 2536, as regards vocational guidance services proper. According to information provided in the report in respect of other Charter provisions, the number of beneficiaries of information and vocational counselling services increased from 66 989 in 2011 to 86 486 in 2014 (including 31 010 young people between 16 and 29 years old). Budget spending on information and counselling activities totalled MDL31 700 in 2011 and MDL32 800 in 2012, whereas the approved budget for 2013 amounted to MDL32 000 (€2000). According to the information provided in the report in respect of other Charter provisions, the budget stood at MDL33 200 in 2013 and MDL33 600 in 2014. No information is given concerning the number of counsellors involved in providing information and vocational guidance services and the minimum qualifications required. The Committee accordingly reiterates its request for information on this subject.

The Committee refers to the criteria for assessing compliance with Article 9 of the Charter already mentioned above and asks that the next reports systematically provide coherent

figures on the resources, staff and number of beneficiaries of vocational guidance in the labour market. In the meantime, it considers that it has not been shown that the right to vocational guidance within the labour market is guaranteed.

*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 has not been 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.

In its last conclusion (Conclusions 2012), the Committee asked for detailed statistics on the number of pupils with disabilities. In reply, the report indicates that the number of pupils in mainstream education with special educational needs has increased, from 1 604 in 2011-2012 to 8 500 in 2014-2015.

According to the annual report of the Ministry of Labour, Social Protection and the Family, in 2014 persons with disabilities constituted 5.2% (183 953) of the total population, while 1.8% of children (13 446) had a disability.

The Committee repeats its question about the number of pupils with disabilities in the special education sector or receiving vocational training, and the percentage of pupils with disabilities entering the labour market after receiving mainstream or special education and/or training.

The Republic of Moldova has ratified the United Nations Convention on the Rights of Persons with Disabilities on 21 September 2010. The first report on the implementation of the Convention was published in 2013.

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

The Committee requested information on a road map drawn up in 2011 for the formulation of a new methodology to assess disability and to ensure the full integration of persons with disabilities. The report contains no information but, according to the Republic of Moldova's initial report to the Committee on the Rights of Persons with Disabilities (2013), Act No. 60 of 30 March 2012 on the social integration of persons with disabilities includes new definitions of disability and persons with disabilities that correspond to those in the United Nations Convention on the Rights of Persons with Disabilities. The Committee asks for information in the next report on the system for assessing and certifying disability.

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

In its last conclusion (Conclusions 2012), the Committee found that the situation was incompatible with the Charter because there was no legislation specifically entitling persons with disabilities to protection against discrimination in education and training. It therefore asked for clarification concerning the existence of appropriate legislation. It also stated that, if the information requested did not appear in the next report, there would be nothing to show that the situation was in conformity with Article 15§1 of the Charter.

The report states that Act No. 60 of 30 March 2012 on the social integration of persons with disabilities prohibits discrimination on grounds of disability in the education field. According to the Republic of Moldova's initial report to the Committee on the Rights of Persons with Disabilities (2013), this legislation also includes provisions to protect disabled persons' rights and measures to respond to infringements of these rights. The Committee asks for more details in the next report on the impact of the new legislation.

The Committee notes from Governmental Committee report (2013) that legislation to ensure equality was enacted on 25 May 2012 and came into force on 1 January 2013. It prohibits all forms of discrimination, including discrimination based on disability, and applies to all individuals and legal persons in the public and private domains. Under the new law, persons with disabilities enjoy the same entitlement as other citizens to education and vocational training, and where possible children with disabilities must have access to the ordinary

education system. Special educational establishments and education in the home should only be considered when integration into a mainstream environment is impossible.

According to the report on the Republic of Moldova of the European Commission against Racism and Intolerance, this legislation created a new body, a council to prevent and combat discrimination and ensure equality, as of 1 January 2013. It is empowered to receive complaints lodged by persons who consider that they have suffered discrimination. Complaints may also be filed by trade unions and NGOs active in the human rights field. The council can undertake investigations on its own initiative. Applications may also be lodged with the courts. Since its establishment, the council has handed down four decisions on discrimination relating to education.

In the light of the information received, the Committee considers that the situation in this regard complies with the Charter.

### **Education**

In its last conclusion (Conclusions 2012), the Committee found that the situation did not comply with the Charter on the ground that the mainstreaming of persons with disabilities in the education and training fields was not effectively guaranteed. It therefore asked for clarification concerning the existence of appropriate anti-discrimination legislation in the field of education and the integration of pupils with disabilities in ordinary and special education. It also stated that, if the information requested did not appear in the next report, there would be nothing to show that the Republic of Moldova was in conformity with Article 15§1 of the Charter.

According to the report, the Education Code which came into force on 23 November 2014 includes a section on inclusive education. This stipulates that provision for children with special educational needs is part of the education system. Pupils with special educational needs can pursue their schooling, free of charge, in mainstream or specialist educational establishments or at home. The state operates an individualised approach to ensure such pupils' inclusion and ordinary schools should include appropriate educational support staff. The Committee asks for information in the next report on the practical impact of this legislation on the integration of pupils into mainstream education.

The Committee notes from the Governmental Committee's report (2013) that, in its Decision No. 523 of 11 July 2011, the Government had approved a programme for the development of inclusive education for the period 2011-2020. The programme is a priority and lays down the framework for a mainstream system of education for all pupils, including ones with special needs. The report describes various measures introduced under this programme, including educational and psychological support services (in 2015 these services exist in 32 districts, 2 municipalities and 1 autonomous region). The report also presents the program.

The report states that 2 500 children with special educational needs have been enrolled in specialist pre-school establishments since 2014. According to the Republic of Moldova's initial report to the Committee on the Rights of Persons with Disabilities (2013), in 2011-2012 2 561 children with disabilities were being educated in specialist or auxiliary institutions and a further 1 600 at home.

The Committee notes that the number of individual teaching plans for pupils with special educational needs rose from 350 in 2011-2012 to 6 000 in 2014-2015. The number of such pupils awarded a certificate for having completed their upper secondary studies also rose (from 27 in 2012 to 238 in 2014).

The Committee notes from the Governmental Committee's report (2013) that Act No. 60 of 30 March 2012 also obliges the state to recruit teachers qualified in sign language and Braille, as well as to undertake reasonable adjustments and provide disabled students with aid and equipment to enable them to pursue their studies.

In the light of the information supplied, the Committee considers that the Republic of Moldova is in compliance with its obligations concerning the integration of persons with disabilities into the mainstream educational environment.

### ***Vocational training***

In its last conclusion (Conclusions 2012), the Committee found that the situation was incompatible with the Charter on the ground that there was no effective mainstreaming of persons with disabilities in vocational training. It therefore asked for information on the number of persons with disabilities integrated into mainstream provision for adults, the steps taken to help them find places in mainstream facilities, the number of specialist vocational training facilities for adults and the number of users of them, and disabled persons' access to universities. The Committee also stated that, if the information requested did not appear in the next report, there would be nothing to show that the situation was in conformity with Article 15§1 of the Charter.

In reply, the report explains that vocational training for young persons and adults with disabilities is provided by vocational training establishments and specialised institutions in the lower secondary and higher education sectors. The Committee notes that, according to the report, the vocational training system is not fully adapted to the needs of all potential users with disabilities. Vocational training institutions include a limited number of persons with disabilities, and the activities offered are geared towards individual support rather than occupational integration. According to the 2016 report of the special rapporteur on the rights of persons with disabilities (A/HRC/31/62/Add.1), there is a fixed quota of 15% for persons with disabilities in vocational training establishments and universities.

According to the report, in 2012-2013, 158 pupils with physical or sensory disabilities were registered in secondary vocational training establishments and in 2014, 94 students with disabilities were enrolled in higher education establishments.

The report states that some 1 604 de-institutionalised children attended 291 mainstream educational establishments in 2012 and 3 500 children in 400 establishments in 2013-2014.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in the Republic of Moldova is in conformity with Article 15§1 of the Charter.

## **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***

According to the annual report of the Ministry of Labour, Social Protection and the Family, in 2014 persons with disabilities constituted 5.2% (183 953) of the total population, while 1.8% (13 446) children had a disability.

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

In its previous conclusion (Conclusions 2012), the Committee found that the situation was incompatible with Article 15 §2 of the revised Charter because it had not been established that persons with disabilities enjoyed adequate protection against discrimination in employment.

According to the Republic of Moldova's initial report to the Committee on the Rights of Persons with Disabilities (2013), the law of 25 Mai 2012 introduces the notion of reasonable accommodation to ensure that persons with disabilities are entitled to exercise all their human rights and fundamental freedoms on the basis of equality with other citizens. The state is responsible for preventing and treating disability, providing rehabilitation, securing reasonable accommodations for persons with disabilities and promoting measures to ensure that such accommodations apply to the social infrastructure, particularly in the employment sector. The Committee invites the next report to provide details on this point. It also asks whether employers are obliged to make suitable adjustments to the working conditions of persons with disabilities.

In the light of the information received, the Committee considers that the situation in this regard is in compliance with the Charter.

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

In its previous conclusion (Conclusions 2012), the Committee asked for information on the follow-up given to the various legislative and non-legislative initiatives in hand to improve the integration of persons with disabilities with regard to employment. In reply, the report refers to a series of reforms initiated during the reference period:

- Act no. 60 on the social integration of persons with disabilities was adopted on 30 March 2012. According to the Republic of Moldova's initial report to the Committee on the Rights of Persons with Disabilities (2013), this law establishes their right to integration into the labour market, particularly the right to employment, and also covers their employment conditions, employers' obligations to employ persons with disabilities, their working hours and leave entitlement and their occupational guidance, training and rehabilitation.
- The social inclusion strategy for persons with disabilities, 2010-2013, adopted in July 2010 (Act no. 169/2010) and the national action plan for its implementation include a series of activities in a variety of fields. In the case of employment, the aim is to establish and develop a quality of life to match that of the disabled person's surrounding community.
- Act no. 56/2011 amends earlier legislation (Act no. 102-XV/2003 on the employment and social protection of job seekers) to ensure that persons with disabilities who are assessed by a local medical panel to be suitable for work are automatically registered on placement lists (see Conclusions 2012).

The report states that the national employment agency – the central body responsible for developing employment and social protection policies, programmes and strategies for all job seekers – has recruited 43 persons responsible for provide services to persons with disabilities and ensure that they are protected against unemployment. The Committee notes that the number of persons registered as disabled with the agency rose from 493 in 2011 to 625 in 2014, of whom 87 and 220 respectively were found jobs.

The report also states that the national employment agency offers job-seekers with disabilities other services to help them find employment, including occupational information and counselling (585 recipients in 2014), employment mediation (312 in 2014) and vocational advice and training (66 in 2014). The Committee asks on the figures in relation to the information provided under Article 1§1, which shows a figure of 1 731 in 2014 (1 081 persons with disability levels I or II and 650 with disability level III). The Committee asks for an explanation in the next report.

The report states that public works were proposed for persons with disabilities during the reference period (16 workers with disabilities in 2011 and 18 in 2014).

The Committee notes from the Governmental Committee's report (2013) that there were 15 specialist undertakings in the Republic of Moldova operating under the auspices of public disability associations with 519 employees, including 315 workers with disabilities.

The report also supplies a list of bodies and NGOs that co-operate with local employment agencies in offering support to persons with disabilities. In 2013, the national employment agency signed a co-operation agreement with the “*Motivație*” association, under which the latter participates in job fairs. A job fair offering vacant posts for persons with disabilities was held for the first time in 2014.

The Committee reiterates its previous questions concerning the number of persons with disabilities integrated into the mainstream labour market and the rate of transfer of persons with disabilities from protected jobs to ordinary employment.

### *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 persons with disabilities are guaranteed effective equal access to employment.

## **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 Moldova.

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

Since the last examination of the situation in the Republic of Moldova (Conclusions 2012), the Committee notes that Law No. 303 of 26 December 2012 amending Law No. 180-XVI of 10 July 2008 on work migration abolished the immigration quota. The new legislation provides that foreigners may now be employed in Moldova when vacancies cannot be filled with nationals.

It also notes that in order to simplify the procedure for granting foreigners the right to work, the authorities no longer require the submission of documents such as medical certificates, criminal record certificates from the workers' countries of origin and accommodation certificates.

The Committee notes from the report that the procedure for obtaining work permits and residence permits has not changed since it last examined the situation. In this respect, it points out that a one-stop shop set up for foreigners enables them to obtain work and residence permits from a single agency.

With regard to self-employment of foreign workers, the report states that those concerned may be granted the right to work without a recommendation from the National Employment Agency. Decisions on granting the right to work and the right of temporary residence for employment purposes are issued within 30 days of the date of registration of the application, and are valid for a period of one year, which may be extended. The report indicates that the duration of work permits varies depending on the investments made by company founders, shareholders or managers. For instance, for an investment of 90 000 euros, the right to work and the right of temporary residence for employment purposes are granted for two years, which may be renewed. In this connection, the Committee requests that the next report clarify the level of investment to be made by a self-employed worker to obtain a one-year work permit.

In the absence of information in the report on the issue of recognition of qualifications, the Committee recalls that, in order to guarantee the effective exercise of the right to engage in a gainful occupation, the liberalising effort to which the States Parties are committed, must cover the regulations governing the recognition of foreign certificates, professional qualifications and diplomas, insofar these qualifications are necessary to engage in a gainful occupation as an employee or self-employed. The Committee asks that the next report provides information on these regulations and how they benefit, in particular, the nationals of States parties to the Charter.

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

In its previous conclusion, the Committee held that the situation in the Republic of Moldova was not in conformity with Article 18§3 of the Charter on the ground that foreign workers had to leave the country as soon as possible when they lost their jobs.

It noted that work permits could be revoked if employment contracts were terminated for justified reasons. Decisions to revoke work permits are communicated to the Ministry of the Interior within five days of being taken and must indicate the ground. These decisions form the basis for revoking the temporary residence permits for employment purposes.

The report again states that, under Article 49 of Law No. 200 of 16 July 2010, temporary residence permits for employment purposes may also be revoked by the competent authorities if the workers no longer meet the conditions under which they were granted.

The Committee points out that if work permits are revoked before the date of expiry, either because the employment contracts are terminated early, or because the workers no longer meet the conditions under which the work permits were granted, it would be contrary to the Charter to automatically deprive such workers of the possibility of continuing to reside in the State concerned and seeking other jobs and new work permits.

The Committee holds that the situation has not changed and is contrary to Article 18§3 of the Charter on the ground that foreign workers must leave the country as soon as possible when they lose their jobs.

*Conclusion*

The Committee concludes that the situation in Moldova is not in conformity with Article 18§3 of the Charter on the ground that termination of the employment contracts of foreign workers leads to cancellation of their temporary residence permits, thus obliging them 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 Moldova.

The Committee notes that there have been no changes to the situation which it has previously (Conclusions 2012) found to be in conformity with the Charter.

*Conclusion*

The Committee concludes that the situation in Moldova is in conformity with Article 18§4 of the 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 contained in the report submitted by the Republic of Moldova.

### ***Equal rights***

The Committee points out that measures relating to maternity protection and family responsibilities are examined under Articles 8 and 27 of the Charter.

The Committee noted in its previous conclusions that Law No. 5-XVI of 9 February 2006 on equal opportunities for men and women prohibits gender discrimination and includes special provisions to promote equality (Conclusions 2008 and 2012).

The Committee emphasised previously that Article 248 of the Labour Code prohibits the employment of women in arduous and underground work except for work in health services and work not requiring physical effort. It pointed out that this type of prohibition was incompatible with the principle of equality laid down in Article 20 of the Charter. The report does not contain any information on this subject. The Committee notes from the report of the Governmental Committee concerning Conclusions 2012 that the Moldovan authorities have no intention of amending the legislation. It therefore reiterates its finding of non-conformity.

In its previous conclusion, the Committee noted that under Law No. 5-XVI of 9 February 2006 on equal opportunities for men and women, persons who considered themselves to be victims of gender discrimination as a result of a decision by their employers could request them to submit in writing the reasons of that decision. If no such justification was submitted within thirty days, the employee could take legal action against the employer (Conclusions 2012).

The Committee asked whether persons who consider themselves to have been victims of gender discrimination were entitled to take legal action under any circumstance or if this right was restricted to the case mentioned above. The Committee also asked whether a shift in the burden of proof was provided for in all gender discrimination cases and requested further information on the number of gender discrimination cases brought before the courts. It also requested information on sanctions and legal remedies, particularly on the existence of any limits on the amount of compensation that could be awarded (Conclusions 2012).

The report states that under Article 18 of the Law on equality of 25 May 2012 (No. 121), all persons who consider themselves victims of gender discrimination have the right to initiate legal proceedings and request:

- the recognition of a violation of their rights;
- the prohibition of the continuing violation of their rights;
- the restoration of the situation preceding the violation of their rights;
- compensation for any pecuniary or non-pecuniary damage incurred and recovery of legal expenses;
- a statement that the act which led to the discrimination against them is void.

The report adds that if the judicial body finds that the principle of non-discrimination has been violated, various types of penalty may be imposed on employers, depending on the type of offence committed.

With regard to a shift in the burden of proof, the report states that, under Article 19 of Law No. 121, the persons who initiate legal proceedings must present the facts through which it can be established that a discrimination took place. The burden of proof that there has not been a discrimination lies with the defendant, save for facts which incur criminal liability.

The Committee points out that Law No. 121 also provides for the establishment of a Council, tasked with preventing and combating discrimination and guaranteeing equality, and hence with examining discrimination complaints and formulating recommendations. The Committee

asks to be kept informed of its activities and the number of complaints of gender discrimination in employment received and their outcome. It also asks whether the Council has the authority to impose sanctions on employers and grant compensation to gender discrimination victims.

The Committee noted previously that there was no upper limit on compensation awarded to victims of gender discrimination (Conclusions 2012). It repeats its request for information on the cases of gender discrimination in employment that have been brought before the courts or the Ombudsman, including precise details about their outcomes, the sanctions imposed on employers and the compensation granted to employees.

The Committee noted previously that under Article 10 of the Labour Code, employers are required to guarantee equal pay and that Article 128 prohibited any gender discrimination in salary payment. The Committee also notes that Article 10(3)(c) of Law No. 5-XVI of 9 February 2006 on equal opportunities for men and women requires employers to provide equal pay for work of equal value. The Committee asked whether, in equal pay cases, the legislation allowed comparisons of jobs and pay outside the company directly concerned, and under what circumstances (Conclusions 2012).

The report states that a comparison of pay between women and men for work of equal value is possible for employees in the state budget (public) sector, where pay conditions and wage amounts are established through legislation and Government decisions. The report adds that in the private sector, working conditions and wages in financially autonomous companies are established through collective bargaining or individual negotiation between employers and employees or their representatives.

The Committee points out that it examines the right to equal pay under Articles 20 and 4§3 of the Charter every two years (thematic group 1 “Employment, training and equal opportunities” and thematic group 3 “Labour rights”). It also points out that equal treatment of men and women encompasses the issue of equal pay for work of equal value. Usually, pay comparisons are made between persons within the same company. However, there may be situations where, to be meaningful, this comparison can only be made between several companies. Therefore, the Committee asks for it to be possible to make pay comparisons across companies. It notes that at the very least, legislation should require pay comparisons across companies in one or more of the following situations:

- when statutory rules apply to the working and pay conditions in more than one company;
- when several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;
- when the terms and conditions of employment are laid down centrally for more than one company within a holding (company) or conglomerate (Conclusions 2012, Statement of Interpretation on Article 20).

The Committee points out that in equal pay litigation cases, the legislation allows pay comparisons with other companies only where the differences in pay can be attributed to a single source. For example, the Committee has found that the situation complied with this principle when in equal pay cases, comparisons could be made with a typical worker (someone in a comparable job) in another company, provided that the differences in pay could be attributed to a single source (Conclusions 2012, the Netherlands, Article 20). The same conclusion applied when it was possible to compare the pay of employees working in a unit made up of persons who were in legally different situations and pay was fixed by a collective agreement applicable to all the entities in the unit (Conclusions 2014, France, Article 4§3).

The Committee considers that the situation is in conformity with Article 20 on this point.

The Committee notes from another source that Article 10(3)(c) of Law No. 5-XVI of 9 February 2006 on equal opportunities for men and women requires employers to provide

equal pay for work of equal value and that, under Article 11(1)(e) of the same law, it is discriminatory for an employer to apply different pay conditions depending on gender for the performance of work of equal value (ILO Committee of Experts on the Application of Conventions and Recommendations (ILO-CEACR), Direct Request (CEACR) – adopted 2014, published 104th ILC session (2015), Equal Remuneration Convention, 1951 (No. 100)). The same source states that Article 7(2)(d) of Law No. 121 specifies that it is discriminatory for an employer to pay “unequal remuneration for the same type and/or amount of work”. The Committee points out that the right of women and men to “equal pay for work of equal value” must be expressly provided for in legislation. Women have the right to the same pay as men for work of equal value. Pay equality therefore concerns the same jobs, but also different jobs of equal value (Conclusions XX-3 (2014), Georgia, Article 4§3). The Committee asks which provisions take precedence in gender pay discrimination cases and requests information on the practical implementation of Article 7(2)(d) of Law No. 121, particularly concerning all administrative or legal decisions.

### ***Equal opportunities***

According to the report, employment rates in 2014 were 37.4% for women and 42.1% for men (in 2011: 37.1% for women and 42.1% for men). The Committee asks for the next report to give the employment rates for men and women and account for any significant gap between the two rates.

The male unemployment rate is higher than the rate among women. In 2011, the rates were 7.7% and 5.6% respectively and in 2014 the rates were 4.6% and 3.1% respectively.

The report also states that most women work in the service sector, namely in education (75.6%), health and social assistance (79.9%). However, they are under-represented in agriculture (30.3%), construction (16.7%) and transport (31.5%).

According to the report, the average wage for women amounted to 87.6% of the wage for men in 2014. The report specifies that, according to the statistics, the national average wage for women is lower than that of men. The report explains this gap by the fact that men are traditionally employed in higher-ranking, better-paid jobs 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 and to tackle occupational segregation.

The Committee asked what measures had been taken to increase the number of women in decision-making positions (Conclusions 2012). The report states that amendments to the Electoral Code have been suggested to guarantee female representation in the executive bodies of political parties while respecting the parity threshold, which requires a minimum participation rate of 40%.

The Committee takes note of the National Programme to Secure Gender Equality which was drawn up for the period 2010-2015 and an action plan for the period 2013-2015. The report gives examples of activities carried out to promote gender equality and to reconcile family life and work.

The Committee asks for updated information in the next report on the concrete measures and activities implemented to promote gender equality, particularly with regard to equal pay for work of equal value, combating gender segregation in the labour market and reducing the gender pay gap, along with information on the results achieved.

### *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 not all professions are open to women, which constitutes discrimination based on sex.

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

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

### **Scope**

The Committee recalls that under Article 24 of the Charter all workers who have signed an employment contract are entitled to protection in the event of termination of employment. According to the Appendix to the Charter, certain categories of workers can be excluded, among them workers undergoing a period of probation. However, exclusion of employees from protection against dismissal for six months or 26 weeks in view of probationary period is not reasonable if applied indiscriminately, regardless of the employee's qualification (Conclusions 2005, Cyprus).

The Committee asks the next report to provide updated information regarding the categories of workers that are excluded from protection in case of dismissal.

### **Obligation to provide valid reasons for termination of employment**

The Committee takes note of the provisions of the Labour Code (2003) concerning termination of employment at the initiative of the employer. It recalls that it has already examined this framework in in Conclusions 2005.

According to Article 86 termination of employment is permitted in the following cases, among others:

- unsatisfactory results of the probation period of the employee;
- liquidation of the enterprise or the termination of the activity of the employer- the physical person;
- reduction of number of workers or staff of the enterprise;
- establishment of the fact that the worker does not correspond to the position or carried out work for health reasons according to the medical conclusion;
- establishment of the fact that the worker does not correspond to the position or carried out work, due to insufficient qualification, confirmed by the decision of the attestation commission;
- change of the proprietor of the enterprise;
- absence from work without a valid excuse for more than four hours within the working day;
- coming to work in the condition of alcoholic, narcotic or toxic intoxication
- committing an embezzlement at the work place (even in small proportions) from the property of the enterprises, established by the decision of judicial instance or body, in whose competence is the application of the administrative sanctions.

The Committee notes in this respect that the employer has the right to terminate employment of an employee in connection with the liquidation of the enterprise or reduction of the number of workers or staff (Article 86). The judicial body examines the request for a resolution of an individual labour dispute in accordance with the Code of Civil Procedure (Law No. 225-XV of 30 May 2003).

Pursuant to the decision of the Supreme Court of Justice of 3 October 2005 on the judicial practice of the examination of litigations relating to termination of individual labour contracts of persons who have been dismissed on the basis of Article 86 of the Labour Code, the judicial authorities shall clarify the following questions: whether the enterprise was liquidated as stipulated in the law; whether employer as a physical person has ceased its activity; whether there is an act of reduction of the number of workers; whether the dismissal procedure was respected; whether the person concerned has received a notice and whether other circumstances of termination of employment are correct and objective.

The Committee recalls that economic reasons for dismissal must be based on the operational requirements of the undertaking, establishment or service. The assessment

relies on the domestic courts' interpretation of the law. The courts must have the competence to review a case on the economic facts underlying the reasons of dismissal and not just on issues of law (Conclusions 2012, Turkey). Article 24 of the Charter requires a balance to be struck between an employer's right to direct/run his/her enterprise as he/she sees fit and the need to protect the rights of the employees. The Committee asks the next report to provide examples of the domestic case law concerning termination of employment on economic grounds.

In its previous conclusion the Committee recalled 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 asked how the legislation complied with this approach.

The Committee notes from the report that attainment of pensionable age does not represent a lawful ground of termination of employment relations. The exception to this rule are civil servants, whose employment should be terminated on the basis of Article 62 of the Law on Civil Service. At the same time Article 42 of the same law provides that when reaching pensionable age, a civil servant can be nominated, at the decision of the person/organ who has the legal competence to do so for a cumulative period of 3 years to the equivalent function and will receive the salary and the pension. As regards other employees, according to Article 55 of the Labour Code, when they reach their pensionable age an individual labour contract can be concluded with them for a period of 2 years, which can be renegotiated after the expiry.

### ***Prohibited dismissals***

In its previous conclusion the Committee asked whether there was a time limit placed on protection against dismissal on the ground of sickness and what rules applied in case of permanent disability.

The Committee notes that under Article 86 (2) of the Labour Code, it is not permissible to dismiss the employee during the period of his/her medical leave.

The Committee notes that according to the Instruction on the Issuance of Certificates of Leave (Approved by the Government Decision No. 469 of 24 May 2005), the certificate for sickness or trauma is issued for the entire duration of treatment, until the restoration of working capacity, but at the maximum 180 days in a calendar year. After the expiration of 120 calendar days of temporary incapacity for work, the patient is sent to the National Council for the Determination of Disability and Work Capacity. The certificate may be extended beyond 120 calendar days for a period of maximum 60 calendar days. After the expiry of 180 calendar days, if there are well-founded reasons concerning the possibility of recovery, to avoid the establishment of the degree of invalidity, the person concerned is sent to the National Council for Determination of Disability and Work Capacity in order to obtain the decision on the extension of the certificate. The extension of the certificate over 180 calendar days can be done on the basis of the opinion of the National Council for the Determination of Disability and Work Capacity for a maximum 30 calendar days, depending on the evolution of the case. In case of tuberculosis, AIDS and cancer of any type, the certificate may be extended further for up to one year.

The Committee also notes that the employee may be dismissed in accordance with Article 86 (1) (d) of the Labour Code in the event that the National Council for the Determination of Disability and Work Capacity decides to establish a degree of disability and recommends that work is counter-indicated or that the employee be transferred to a lighter work.

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

The Committee takes note of Articles 355 and 89 of the Labour Code governing the settlement of individual labour disputes and reinstatement. It notes that the application regarding the settlement of individual labour disputes is submitted to the judicial instance within one year since the day when the worker has learned about the violation of his right. The judicial instance convokes the parties of dispute within 10 calendar days from the date of registering the application. The judicial instance examines the application for settling the labour dispute in a term not exceeding 30 calendar days, also takes a decision and can be appealed against according to the Civil Code. The judicial instance transmits the decision to the parties within three calendar days.

According to Article 90, in case of reinstatement of the unlawfully dismissed or transferred employee to the previous job, the employer is obliged to compensate for the damage caused, which includes:

- compulsory payment of compensation for the entire period of forced absence, at least equal to the average wage of the wage-earner for that period;
- compensation for the additional costs of contesting the transfer or dismissal (consultation of specialists, legal costs, etc.);
- compensation for non-pecuniary damage to the employee. The amount of compensation for non-pecuniary damage shall be determined by the judicial body, taking into account the assessment given to the employer's actions, but it cannot be less than the monthly average salary of the employee.

According to the report, both in the case of pecuniary damage as well as non-pecuniary damage, the maximum amount of compensation is not established by law.

#### *Conclusion*

The Committee concludes that the situation in Moldova is in conformity with Article 24 of the Charter.

## **Article 26 - Right to dignity in the workplace**

### *Paragraph 2 - Moral harassment*

In application of the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on conclusions of non-conformity for repeated lack of information in Conclusions 2014.

The Committee takes note of the information submitted by Moldova in response to the conclusion that it had not been established that employees are given appropriate and effective protection against moral (psychological) harassment in the workplace or in relation to work (Conclusions 2014, Republic of Moldova).

Under Article 26§2 victims of harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer.

In addition, the persons concerned must have a right to be reinstated in their post when they have been unfairly dismissed or pressured to resign for reasons linked to harassment (Conclusions 2003, Bulgaria, Conclusions 2005, Republic of Moldova).

According to the report employees unlawfully dismissed may be reinstated, and may be awarded compensation for pecuniary and non pecuniary loss, there are no limits to the amount of compensation that may be awarded for non pecuniary loss. The Committee considers that the situation is in conformity with the Charter on this point.

### *Conclusion*

The Committee concludes that the situation in the Republic of Moldova is in conformity with Article 26§2 of the Charter on this issue.

## **Article 28 - Right of workers' representatives to protection in the undertaking and facilities to be accorded to them**

In application of the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on conclusions of non-conformity for repeated lack of information in Conclusions 2014.

The Committee takes note of the information submitted by the Republic of Moldova in response to the conclusion that it had not been established that workers' representatives, other than trade union representatives are guaranteed protection against dismissal or prejudicial acts other than dismissal where they are exercising their functions outside the scope of collective bargaining and facilities identical to those afforded to trade union representatives are provided to other workers' representatives (Conclusions 2014, Republic of Moldova).

This provision guarantees the right of workers' representatives to protection in the undertaking and to certain facilities. It complements Article 5, which recognises a similar right in respect of trade union representatives (Conclusions 2003, Bulgaria).

The report states that there has been no change to this situation, however consideration is being given to modifying the situation. Therefore the Committee reiterates its previous conclusion.

### *Conclusion*

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 28 of the Charter on the grounds that it has not been established that:

- workers' representatives, other than trade union representatives are guaranteed protection against dismissal or prejudicial acts other than dismissal where they are exercising their functions outside the scope of collective bargaining;
- facilities identical to those afforded to trade union representatives are provided to other workers' representatives.