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European Committee of Social Rights

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Chapter 14 – Conclusions concerning Articles 1, 9, 10, 15, 18, 20, 24 and 25 of the Revised Charter in respect of Lithuania

Introduction

The function of the European Committee of Social Rights is to assess the conformity of national law and practice with the European Social Charter and the Revised Charter. In respect of national reports, it adopts "conclusions" and in respect of collective complaints, it adopts "decisions".

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

The Revised European Social Charter was ratified by Lithuania on 29 June 2001. The time limit for submitting the 5th report on the application of the Revised Charter to the Council of Europe was 31 October 2007 and Lithuania submitted it on 29 February 2008.

This report was the first under the new system for the submission of reports adopted by the Committee of Ministers.[2] It concerned the accepted provisions of the following articles belonging to the first thematic group "Employment, training and equal opportunities":

– the right to work (Article 1),
– the right to vocational guidance (Article 9),
– the right to vocational training (Article 10),
– the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15)
– the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
– the right of men and women to equal opportunities (Article 20),

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

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

– the right to protection in cases of termination of employment (Article 24),
– right of workers to the protection of claims in the event of insolvency of the employer (Article 25).

Lithuania has accepted these provisions with the exception of Articles 18§2 and 18§3.

The applicable reference periods were:

– 1 January 2003 – 31 December 2006 for Article 18;
– 1 January 2005 – 31 December 2006 for Articles 1, 9, 10, 15, 20, 24 and 25.

The present chapter on Lithuania concerns 18 situations and contains:

– 9 conclusions of conformity: 1§1, 1§3, 10§1, 10§4, 10§5, 15§1, 18§1, 20 and 24;
– 6 conclusions of non-conformity: 1§2, 1§4, 9, 10§3,15§2 and 15§3.

In respect of the 3 other situations concerning Articles 10§2, 18§4 and 25, the Committee needs further information. The Government is therefore invited to provide this information in the next report on the articles/provisions in question.

The next Lithuanian report deals with the accepted provisions of the following articles belonging to the second thematic group “Health, social security and social protection”:

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

The deadline for the report was 31 October 2008.

Article 1 – Right to work

Paragraph 1 – Policy of full employment

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

Employment situation

The Committee notes that, according to Eurostat, economic growth in Lithuania was still high during the reference period and increased from 7.3% in 2004 to 7.7% in 2006.

The employment rate continued its upward trend during the reference period, from 61.2% in 2004 to 63.6% in 2006, as did the female employment rate (from 57.8% in 2004 to 61% in 2006).

Unemployment decreased sharply, from 11.4% in 2004 to 5.6% in 2006, whereas the EU-15 average in 2006 was 7.7%. Unemployment among women and young people also continued to fall, the former from 11.8% in 2004 to 5.4% in 2006 and the latter from 22.7% in 2004 to 9.8% in 2006; the EU-15 average in 2006 was 8.5% for women and 15.7% for young people.

Long-term unemployment as a percentage of total unemployment also decreased, from 51.2% in 2004 to 44.3% in 2006, but it is still slightly above the EU-15 average (42.1% in 2006).

There is still no information in the report on the employment and unemployment rates of persons with disabilities. The Committee asks for the next report to contain this information. It also asks what the situation among immigrants and minorities is.

Employment policy

The Committee notes that according to the report, the main aims of the Government's employment policy are as follows:

– to increase flexibility;
– to get more unemployed people back to work.

The unemployment benefit system was also reformed in 2006 following the adoption of the Employment Support Act of 1 August 2006 to get more unemployed people back into the labour market

and encourage them to search actively for work. A system for the individual monitoring of jobseekers was developed through the introduction of personal action plans.

Of the active measures taken to foster occupational reintegration during the reference period, particularly for the most disadvantaged groups (such as the long-term unemployed, young people and people in difficult circumstances or without any qualifications), the most important were subsidised employment, employment contracts with public bodies and training measures.

The Committee notes that some 67,600 jobseekers took part in active measures in 2006 (compared to 123,600 in 2005), and that 56,200 of these were women, 26,300 long-term unemployed, 11,600 young people and 4,900 people with disabilities. The total number of participants in training courses decreased from 26,700 in 2005 to 24,500 in 2006, including 14,700 women. The activation rate fell from 93% in 2005 to 75.7% in 2006. The Committee asks for the Government's comments on this marked decline. It also asks how much time elapses on average between a person registering as unemployed and receiving an offer of an active measure.

The employment of young people and people with disabilities was also a priority. Grants are now awarded to companies which take on young graduates (for a six-month period) or people with disabilities. Special measures for young people yielded positive results as the employment rate among young people increased from 21.1% in 2005 to 23.7% in 2006.

People who have just obtained their first job or have taken part in a back-to-work programme are now entitled to an employment bonus, as are workers over 50. Furthermore, to facilitate access to training, a training allowance is paid to unemployed people in addition to their unemployment benefit for the first three months of any training course they attend.

The report acknowledges that unemployment figures vary substantially from one region to another. The Committee asks what steps are planned to reduce these regional disparities.

The Committee notes that total spending on active and passive employment policy increased during the reference period, from 0.3% of GDP in 2004 to 0.4% in 2006. The portion of spending devoted to

active measures increased from 0.1% of GDP in 2004 to 0.3% in 2006, whereas the EU-15 average was 0.5% in 2006.

Conclusion

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

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

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

1. Prohibition of discrimination in employment

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

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

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

Article 2 of the Labour Code establishes the principle of equal treatment in all the spheres governed by the Labour Code irrespective of sex, sexual orientation, race, national origin, language, origin, nationality, social status, religion, family situation,

age, opinion, membership of a political party or other public body or any other factor unconnected with a person's occupational skills. Furthermore, the Equal Treatment Act, which came into force on 1 January 2005, prohibits all discrimination on the grounds of age, sexual orientation, disability, race, ethnic origin or religious or other beliefs. The Committee notes that the latter Act has a broader field of application than the area of employment relations alone. To gain a sufficiently accurate overall picture, the Committee asks for the next report to give a full description of the situation in law and in practice with regard to each of the prohibited grounds for discrimination.

Lithuanian legislation covers discrimination in all areas of employment, including recruitment, dismissal and training. The Committee notes that the prohibition on discrimination on the ground of sex may be waived if a particular job can only be performed by workers of one of the two sexes. It refers to its consideration of the conditions in which this exception may be authorised under Article 20 of the Revised Charter. In the absence of any information on the subject in the report, the Committee asks whether exceptions to the general ban on discrimination may be authorised where they are warranted by essential occupational requirements and/or for the purposes of positive action.

As there is no information on the subject in the report, the Committee asks again how the notion of discrimination on the ground of age is interpreted.

Section 2§4 of the Equal Treatment Act defines indirect discrimination as a seemingly impartial and egalitarian act, omission, legal rule, evaluation criterion, condition or practice, which, when applied, restricts or may restrict rights or extends or may extend privileges, priorities or advantages. According to the report there is no case-law interpreting the idea of indirect discrimination.

Discrimination cases may be brought before the Equal Opportunities Ombudsman, who is authorised to investigate the facts and make conclusions, which may be combined with fines for any individual or legal entity in breach of the law. Such cases may also be brought before the courts, as referring a case to the ombudsman does not affect the right of access to judicial remedies. Furthermore, the ombudsman's decisions may also be appealed against in court.

Under Articles 19 and 21 of the Labour Code, trade unions and staff committees may represent employees and initiate legal proceedings against employers' decisions and actions, alleging discrimination in employment.

In disputes relating to an allegation of discrimination in matters covered by the Revised Charter, the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment. Under section 13 of the Equal Treatment Act the procedure with regard to infringements of the right to equal treatment is the same as the one that is to be followed under the Equal Opportunities for Women and Men Act. Under this Act it is for the defendant in discrimination cases to prove that the principle of equal treatment has not been infringed.

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

Under the Civil Code, victims of discrimination are entitled to compensation for pecuniary and non-pecuniary damage and there is no upper limit on the amount that they may be awarded.

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

The Committee asked previously whether foreign nationals were denied access to certain types of job. The report only mentions a restriction based on the degree of knowledge of Lithuanian and does not state whether certain categories of employment are barred to foreigners even if they have an excellent knowledge of Lithuanian. The Committee therefore asks again whether certain categories of job are reserved for Lithuanian nationals whatever their extent of knowledge of the language and if so, which ones.

With regard to discrimination in employment on grounds of past employment in the security services of the former Soviet Union, the Committee noted previously that the Act on the evaluation of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the present activities of former permanent employees of the organisation (16 July 1998) significantly restricted the employment rights of former employees of the USSR institutions responsible for security matters.

The Committee considered that, although the restrictions were prescribed by law within the meaning of Article G of the Revised Charter and served one of the purposes therein, namely the protection of national security, they were not necessary and proportionate in that they applied to a large range of different jobs and not solely to those services which had responsibilities in the field of law and order and national security or to functions involving such responsibilities. It found therefore that the situation in this respect was incompatible with Article 1§2 of the Revised Charter.

The Committee notes that a new Act adopted by parliament on 17 April 2007 sought to reduce these restrictions. However, the President of the Republic made use of his right of veto and referred the bill back to parliament, requesting that its scope be limited further. The Committee asks for the next report to describe the new legislation. As there has been no change in the situation since the previous conclusion, the Committee renews its finding of non-conformity on this point.

2. Prohibition of forced or compulsory labour

Under Article 119 of the Labour Code, employers are prohibited from requiring their employers to perform work which is not in their employment contract except in certain circumstances provided for by the Code itself.

It is not necessary for employees to give their consent or the employment contract to be amended where they are asked to respond to emergency situations such as a natural or industrial disaster or to prevent accidents, fight fire or deal with any other unexpected emergency situation. To be acceptable, work of this type must last no more than a month and be located in the employee's usual workplace.

Employees must give their consent and employment contracts must be amended in the event of changes in type or scale of production, technology used or working arrangements or of other changes required for production to continue. Employees who refuse to work under these new conditions may be dismissed (under Article 120 of the Labour Code). The Committee considers that the reasons for amending employment conditions may be too broad in scope to meet the requirements of Article G of the Revised Charter (see above). The threat of dismissal for an employee refusing to work under the new conditions is such that it may deny employees their freedom of choice. However, before examining this situation in the light of the prohibition of forced labour, the Committee would ask how the courts and the social partners interpret this rule and if its implementation is subject to safeguards designed to protect employees.

Prison work

The Committee takes note of the information in the report concerning prison work. It notes that under certain conditions prisoners may work for the prison authorities or state enterprises. The Committee asks for confirmation that prisoners may not work for private companies or bodies. It also asks whether work for a state enterprise can be performed outside prison.

The Committee notes that prisoners must give their consent to work. They receive a wage which varies according to their hours and the nature of the work performed. The Committee asks how much these wages amount to compared to those received by ordinary workers. The tasks performed for the prison authorities are of a domestic nature. Those carried out for state enterprises vary and include work such as processing of plastic, timber or metal, production of electrical goods, sewing, shoe-making, bread-making and car repair work.

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

Privacy at work

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

Restrictions linked to the fight against terrorism

The Committee notes that anti-terrorism legislation does not preclude persons from taking up certain jobs.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 1§2 of the Revised Charter on the ground that the Act on the evaluation of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the present activities of former permanent employees of the organisation entails restrictions which go beyond the scope of Article G of the Revised Charter.

Paragraph 3 – Free placement services

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

Under a new act adopted in 2006, public employment services are run by the Lithuanian Employment Office, which works *inter alia* in co-operation with the Lithuanian office for labour market training and its local branches.

160,800 people were registered as unemployed on the employment office's lists in 2006 (164,000 in 2005).

According to the report, the total number of vacancies notified to the employment office increased from 124,000 in 2005 to 125,000 in 2006. The placement rate fell from 67% in 2005 to 62% in 2006.

The report also gives the figure for the total number of vacancies notified to local branches of the employment office, which increased from 101,900 in 2005 to 109,700 in 2006. The placement rate increased from 75.7% in 2005 to over 78% in 2006.

The Committee asks what the impact of the new employment office has been at national and local level and what qualifications its staff are required to have.

According to the report, the employment office conducts an audit on the activities of private agencies every three years on average. The Committee asked previously (Conclusions 2006) what the relative market shares were for public employment services and private agencies in terms of placements made. In the absence of a reply, it repeats its question.

Conclusion

The Committee concludes that the situation in Lithuania is in conformity with Article 1§3 of the Revised Charter.

Paragraph 4 – Vocational guidance, training and rehabilitation

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

As Lithuania has accepted Article 9, 10§3 and 15§1 of the Revised Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to guidance and vocational training for persons with disabilities are dealt with under these provisions.

In these conclusion, the Committee found that the situation with regard to vocational education and training of persons with disabilities (Article 15§1) was in conformity with the Revised Charter.

However, it found the situation not in conformity with the Revised Charter with regard to vocational guidance (Articles 9) on the ground that it has not been established that equal treatment is guaranteed to all nationals of States Parties and with regard to continuing vocational training for workers (Article 10§3) on the ground that it has

not been established that the right to individual training leave is guaranteed to workers.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 1§4 of the Revised Charter.

Article 9 – Right to vocational guidance

The Committee takes note of the information provided in Lithuania's report and refers to its previous conclusions (Conclusions 2005 and 2007) for a general description of the guidance system.

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

Vocational guidance within the education system

a. Functions, organisation and operation

In its previous conclusion (Conclusions 2007), the Committee noted that private services and institutions provided fee-paying guidance. It asked for the next report to confirm that these private services covered only a small share of the market. In the absence of any information in the report, the Committee repeats its question.

b. Expenditure, staffing and number of beneficiaries

In 2006, the state allocated a budget of 2,165,816 Lithuanian Litas (LTL) (€ 628,000) to vocational guidance services in the education system, but ultimately only LTL 780,056 (€ 226,000) was actually spent.

In 2005, the career planning centre provided services for 1,127 people, 1,104 of whom were pupils. In 2006, the centre advised 716 people, 699 of whom were school pupils. The Committee asks why the number of beneficiaries decreased.

In the absence of information, the Committee asks for the next report to provide up-to-date information on the numbers of staff assigned to vocational guidance in the education system.

Vocational guidance in the labour market

a. Functions, organisation and operation

In 2005, a three-year strategy was launched to improve the vocational guidance system and establish common national standards. In 2006, a methodology was developed for the various centres and guidance counsellors. Training was organised for

counsellors and a study was conducted on the feasibility of setting up guidance centres in the municipalities. The Committee asks for the next report to provide information on the results of the strategy.

b. Expenditure, staffing and number of beneficiaries

In 2006, the budget allocated by the Lithuanian Labour Market Training Authority (LLMTA) to guidance was LTL 576,030 (€ 167,000) but, ultimately, spending came to LTL 643,030 (€ 186,000).

According to the report, there are 52 information and advice centres spread throughout the country, employing 44 counsellor-psychologists. Five people work at the LLMTA's career planning division, which is responsible for co-ordinating the local branches' vocational guidance activities.

In 2005, the local training and advice centres assisted 68,736 people, 53,008 of whom were adults and 15,728 students, parents or teachers. In 2006, the total number of beneficiaries was 63,465, 46,139 of whom were adults and 17,326 students, parents or teachers. The Committee asks why the number of beneficiaries has decreased.

Dissemination of information

The Committee notes that there has been no change in the situation which it previously considered (*ibid.*) to be in conformity with the Charter.

Equal treatment of nationals of the other States Parties

In its two previous conclusions (*ibid.*) the Committee asked whether there was a length of residence requirement for foreign nationals residing or working lawfully in Lithuania to be entitled to vocational guidance. For the third time in succession, the report fails to answer this question. In the repeated absence of information, the Committee concludes that the situation is not in conformity on this point.

The Committee notes that, pursuant to the Revised Charter, equality of treatment in matters of vocational guidance must be guaranteed for non-nationals. Pursuant to the Appendix to the Charter, equality of treatment must be guaranteed for nationals of other States Parties lawfully resident or working regularly in the territory of the party

concerned. This implies that no length of residence requirement may be imposed on students or trainees who reside in whatever capacity or are authorised to reside, because of their links with persons legally residing in the country, in the territory of the party concerned, before they can begin their training.

The Committee notes that under section 53 of the Legal Status of Aliens Act, entitlement to a permanent residence permit is dependent, among other things, on five years' residence in Lithuania. The Committee asks whether foreign nationals are required to have resided in Lithuania for five years before they are entitled to vocational guidance services.

Conclusion

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

Article 10 – Right to vocational training

Paragraph 1 – Technical and vocational training and the granting of facilities for access to higher technical and university education

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

The Committee takes note of the information provided in the Lithuanian report and observes that the situation which it has previously (Conclusions 2007) found to be in conformity with the Revised Charter has not changed.

In its previous conclusion (Conclusions 2007) the Committee noted the amendments introduced in 2004 to the Vocational Education and Training Act, which aimed at establishing a system of qualifications, recognition of skills acquired in non-formal contexts and laying down and enforcing standards for vocational education and training. The Committee wishes to be informed about the changes resulting from this amendment.

Conclusion

The Committee concludes that the situation in Lithuania is in conformity with Article 10§1 of the Revised Charter.

Paragraph 2 – Apprenticeship

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

In its previous conclusion (Conclusions 2007) the Committee asked for information on the number of apprentices, total expenditure – public and private – on apprenticeship training and whether the number of places was sufficient to meet the demand for apprenticeship. The Committee notes that the report does not provide this information. Therefore it holds that if the necessary information is not provided in the next report there will be nothing to show that the situation in Lithuania is in conformity with Article 10§2 of the Revised Charter.

Conclusion

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

Paragraph 3 – Vocational training and retraining of adult workers

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

Employed persons

In its previous Conclusion (Conclusions 2007) the Committee asked for information on continuing training programme for employed persons and figures on the participation rate in these programmes. It notes from the report that the number of persons referred by employers to the labour market training centres was 8,964 in 2005 and 9,647 in 2006.

The Committee also asked how spending on continuing training was broken down between central Government, local authorities, other public bodies, firms and individuals. It notes from the report that state funds are used for employees in public administration, health, education and energy. In the private sector continuing training is funded by employers and employees themselves. According to the report, however, the number of companies organising continuing education for their staff is almost three times smaller than in the EU-15.

The Committee notes from the report that workers who have received a dismissal notice are referred to training programmes. The Committee notes that the report does not again reply to its previous question (Conclusions 2005 and 2007) on whether and under what conditions employed persons are entitled to individual training leave. Therefore it holds that it has not been established that the right to individual training leave is guaranteed to workers.

Unemployed persons

The Committee notes from Eurostat that the unemployment rate amounted to 5,6% in 2006 (the EU-15 average being 7,7%). According to the report 28,200 unemployed persons completed a

vocational training course in 2005-2006, the majority of whom were trained in the services sector. As a result of vocational training, all persons given a notice of dismissal either remained in the same company or found employment elsewhere.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 10§3 of the Revised Charter on the ground that it has not been established that the right to individual training leave is guaranteed to workers.

Paragraph 4 – Long term unemployed persons

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

The Committee notes from the report that the long-term unemployment rate continued to decline and reached 44.3% in 2006. The EU-15 average in 2006 amounted to 42.1%.

The Committee takes note of retraining and reintegration measures taken specifically for long-term unemployed persons, including active labour market policy measures (73,500 persons), employment support programmes (30,000 persons), targeted job club meetings (27,800 persons). 20,400 persons participated in courses aimed at refreshing their vocational qualifications and 7,600 of them became able to choose a profession. 1,900 persons refreshed their vocational knowledge and 10,800 people became more active in their job-seeking efforts.

The Committee asks whether the equality of treatment with respect to access to training and retraining for long-term unemployed persons is guaranteed for nationals of other States Parties legally resident in Lithuania.

Conclusion

The Committee concludes that the situation in Lithuania is in conformity with Article 10§4 of the Revised Charter.

Paragraph 5 – Facilities

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

Fees and financial assistance (Article 10§5 a and b)

In its previous conclusion (Conclusions 2007) the Committee asked for information on the level of grants or allowances awarded in various education sectors. In this connection the Committee takes note of the Law on Support for Employment (which came into force on 1 August 2006) which stipulates that unemployed persons taking part in vocational training programmes or in non-formal education are entitled to an education grant in the amount of 0,7% of the minimum monthly wage plus travelling and accommodation costs. Vocational training in the labour market is financed by the Employment Fund.

Regarding higher education, the Committee reiterates its question whether the total sum available for university student allowances is sufficient to match the rising number of students.

Training during working hours (Article 10§5 c)

The Committee notes that there have been no changes to the situation that it has considered (Conclusions 2005 and 2007) to be in conformity with the Revised Charter.

Efficiency of training (Article 10§5 d)

The Committee takes note of the vocational training assessment surveys conducted by the Lithuanian Labour Exchange (LLE) with a view to examining its effectiveness. The results have revealed a general satisfaction with various training programmes, with 94% of respondents positively evaluating the impact and 89% of respondents wishing to further continue training.

Conclusion

The Committee concludes that the situation in Lithuania is in conformity with Article 10§5 of the Revised Charter.

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

Paragraph 1 – Education and training for persons with disabilities

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

According to the report, in 2006 there were 260 000 persons with disabilities. No other up-dated figures are provided. The Committee highlights that it needs to be systematically informed of:

- the total number of persons with disabilities, including the total number of children with disabilities;
- the number of children with disabilities attending mainstream schools and training facilities;
- the number of those attending special education and training institutions;
- the number of persons with disabilities (children and adults) living in institutions;
- any relevant case law and complaints brought to the appropriate bodies with respect to discrimination on the ground of disability in relation to education and training.

Definition of Disability

The Committee notes that since July 2005, when the new Law on Social Integration of the Disabled came into effect, the shift has been made from the medical definition of disability to the social one, such as that endorsed by the WHO in its International Classification of Functioning (ICF, 2001).

Anti-discrimination legislation

The Committee refers to its previous conclusion (Conclusions 2007) for a description of the legal framework adopted in 2003 (Law IX-1826 on Equal Treatment and the Act on Education), which it considered in conformity with the requirements of Article 15§1.

The Committee reiterates that it wishes to know whether the decisions of the Equal Opportunities Ombudsman and its Office may be appealed against before the courts.

Education

In its previous conclusion the Committee noted that a majority of students with disabilities, including intellectual disabilities, were increasingly mainstreamed. As mentioned above, the Committee requests the next report to provide up-to-date information on developments in respect of mainstreaming.

The Committee reiterates its question as to whether general teacher training includes a module on special educational needs. Moreover, in its previous conclusion, it noted from another source[1] that a lack of qualified teachers and appropriate support and assistance appeared to hinder the education of children with disabilities in practice. The Committee therefore asks the next report to clarify what measures are taken to appropriately train teachers on special educational needs.

Vocational training

The Committee refers to its previous conclusions (Conclusions 2005 and 2007) for a description of the legal framework (2003 Equal Treatment Act and the Law on Vocational Education and Training) and the various existing forms of training, vocational information, guidance and counselling services as well as rehabilitation services consisting in counselling, restoration and development of new capacities, and re-qualification.

The Committee had noted in its previous conclusion that a new financing procedure was put in place for vocational schools to allow funds to follow the student and thereby encourage mainstream institutions to develop special assistance and support. The Committee asks the next report to provide details on the impact in practice of this new procedure, in particular highlighting whether the number of persons with disabilities benefiting from training has increased. In this regard, it reiterates its questions concerning up-to-date figures as mentioned above.

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[1] EUMAP (EU Monitoring and Advocacy Programme of the Open Society), *Right of People with intellectual disabilities: access to education and employment*, Summary Report Lithuania, 2005.

The Committee asks the next report to include a detailed account on the implementation of the National Programme for Social Integration of the Disabled 2003-2012 in so far as it deals with education and training.

Conclusion

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

Paragraph 2 – Employment of persons with disabilities

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

According to the report, in 2006 there were 260,000 persons with disabilities, of whom 140,000 were of working age. 10,828 persons with disabilities were registered with the territorial labour exchange offices and were searching for a job but only 902 disabled persons actually addressed the said offices.

As concerns the total number of employed persons with disabilities, the report contains contradictory figures: 36,662 is the total provided as reply to the Committee's previous conclusion's questions, whilst other information provided in the report, indicates 3,809 as the total number of disabled employed persons. The number of disabled persons working in social enterprises in 2006 was 1,328. It is not clear whether this is the total number of persons with disabilities working in sheltered employment.

The Committee therefore asks the next report to provide clear up-dated figures as concerns:

- the total number of disabled persons in working age;
- the total number of persons with disabilities employed in the ordinary market as well as that of those employed in sheltered employment;
- the rate of progression of persons with disabilities from sheltered employment to the ordinary labour market.

Definition of disability

The Committee refers to its previous conclusion for a description of the way the assessment of capacity for work is carried out according to the Law on Social Integration of the Disabled, as amended in 2004, and the remedies available for complaints about such assessment.

Anti-discrimination legislation

In its previous conclusion, the Committee noted that the 2003 Law on Equal Treatment prohibits discrimination on the ground of disability with respect to recruitment, employment and working conditions including dismissal and pay, promotion, access to training and guidance.

However, the Committee notes from another source[1] that Lithuanian legislation does not provide for the adjustment of working conditions (reasonable accommodation) to the needs of persons with disabilities. It therefore considers that the situation is not in conformity with the Revised Charter.

The Committee reiterates that it wishes to know whether the decisions of the Ombudsman for Equal Opportunities may be appealed against before the courts and whether compensation for material and non-material damages may be awarded to the person who has been discriminated.

Measures to promote employment

The Committee notes the adoption in June 2006 of the Law (73-2762) on Support for Employment, which provides for new measures (subsidies to employers, grants to disabled persons for vocational rehabilitation programmes, etc.) aiming at increasing job opportunities for persons having difficulties in integrating the labour market, including disabled persons. The report highlights that this law repeals

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[1] Lithuanian Country Report on measures to combat discrimination (Directives 2000/43/EC and 2000/78/EC), State of affairs up to 8 January 2007. Report drafted by Edita Ziobiene for the European Network of Legal Experts in the non-discrimination field, available at:
http://europa.eu.int/comm/employment_social/fundamental_rights/policy/aneval/mon_en.htm

the employment support measure consisting in a quota obligation for employers (4%). The Committee asks the next report to provide information on the actual impact of this law on the employment of disabled persons, specifying whether employment opportunities are found rather in the open labour market or in the protected one.

The Committee reiterates that it wants to be informed on the conditions of employment in sheltered employment, particularly as regards the issue of wage levels (see Conclusions 2007).

The Committee also asks the next report to include a detailed account on the implementation of the National Programme for Social Integration of the Disabled 2003-2012, particularly of the measures it contains to help them find a job or alternative forms of employment such as work therapy. The Committee asks whether such measures prompted an increase in the integration of persons with disabilities, including of persons with intellectual disabilities. The Committee recalls that Article 15§2 of the Revised Charter requires that persons with disabilities be employed in an ordinary working environment; sheltered employment facilities therefore must be reserved for those persons who, due to their disability, cannot be integrated into the open labour market. They should aim nonetheless to assist their beneficiaries to enter the open labour market.

Conclusion

The Committee concludes the situation in Lithuania is not in conformity with Article 15§2 of the Revised Charter on the ground that legislation does not make reasonable accommodation of the workplace a requirement.

Paragraph 3 – Integration and participation of persons with disabilities in the life of the community

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

Anti-discrimination legislation and integrated approach

In its previous conclusion (Conclusions 2007), the Committee noted that the combined effect of the Social Integration of the Disabled Act, as amended in 2004, and the Equal Treatment Act of 2003 (section

5) was to provide persons with disabilities with some protection against direct or indirect discrimination. The first of these acts establishes the principle of the social integration of disabled persons through equal opportunities in education, employment, sport and leisure, involvement in the life of the community and all other related matters. The second guarantees equal treatment in education, employment and consumer protection. It also makes provision for appeals.

However, the Committee reiterates that the right of persons with disabilities to social integration provided for by Article 15§3 implies that barriers to communication and mobility should be removed to offer them access to transport by road, rail, sea and air, public/social and private housing, and cultural activities and leisure, such as social and sporting activities. Article 15§3 therefore requires comprehensive non-discrimination legislation covering both the public and private spheres in fields such as housing, transport, telecommunications and cultural and leisure activities and effective remedies for those who have been treated unlawfully.

The Committee notes that certain aspects such as housing, transport and telecommunications are not explicitly covered by the legislation described above. It considers therefore that the situation is not in conformity with the Revised Charter.

Consultation

The Committee notes that there has been no change in the situation which it previously considered (Conclusions 2005) to be in conformity.

Forms of financial aid to increase the autonomy of persons with disabilities

Under the National Programme for the Social Integration of the Disabled (2003-2012), a special budget is allocated to the social integration of people with disabilities, and one of the main aims of this is to improve access to public buildings, housing and information.

Measures to overcome obstacles

Technical aids

The Committee refers to its statement of interpretation on Article 15§3 in the General Introduction to these conclusions.

It asks whether persons with disabilities are entitled to free technical aids or must contribute themselves to the cost. If an individual contribution is required, the Committee asks whether the state provides some financial contribution to the cost of obtaining technical aids. It also asks whether disabled persons are entitled to free support services, such as personal assistance or home help, when required, or have to meet some of the cost of such measures. The Committee finally asks whether mechanisms are in place to assess the barriers to communication and mobility faced by individual persons with disabilities and to identify the technical aids and support measures that may be required to assist them in overcoming these barriers.

The report updates the information concerning what technical aids are available through the Strategy for the Provision of Technical Aids to Disabled Persons for 2004-2010. In 2006, the social welfare and rehabilitation services helped over 48 800 people with disabilities to regain a degree of autonomy. Technical aids were provided for 6 248 people with sight and hearing problems.

Communication

The Committee refers to its previous conclusions (Conclusions 2005 and 2007) for a description of the communication and new technologies projects that have been carried out for the disabled.

Mobility and transport

The report provides up-to-date information on measures taken to implement the provisions of the National Programme for the Social Integration of the Disabled (2003-2012) relating to access to public and private buildings. In 2005, 302 buildings were converted, including 40 public buildings. In 2006, 386 buildings were converted, also including 40 public buildings.

The report also describes all the measures taken to improve disabled access to road, rail, sea and air transport (installation of lifts, access

ramps, audio and visual information points and special sanitary installations).

Housing

Under the 2002 Act on state aid for the purchase or rental of housing, the state will cover up to 20% of a loan to adapt housing to disabled people's needs. The Social Integration of the Disabled Act, as amended in 2004, also makes provision for state aid.

Over the period from 1998 to 2006, three associations of disabled people (the Society of the Physically Disabled, the Association for the Adaptation of Housing for the Disabled and the Union of the Disabled) took part in housing improvement work. In 2005, the state allocated a budget of 1.32 million Lithuanian Litas (LTL) (€ 382,000) to the adaptation of housing, and 262 flats were renovated as a result. In 2006, the equivalent budget was LTL 2.28 million (€ 659,000) and 345 flats were renovated.

On 28 June 2006, the Government adopted a resolution and made three bodies (the Ministry of Social Security and Labour, the Ministry of the Environment and the Department for the Disabled) responsible for converting housing. The resolution comprises a programme for the renovation of housing for people with motor impairments covering the period from 2007 to 2011. The Committee asks for the next report to provide information on the outcome of this programme.

Culture and leisure

In 2005 and 2006, under the National Programme for the Social Integration of the Disabled (2003-2012), the Ministry of Social Security and Labour implemented a programme for the integration of people with disabilities in the culture, sports and leisure fields. As a result, 236 cultural events involving 17 480 people were held in 2005 and 529 events involving 18 544 people were held in 2006. In 2005, four sports clubs were adapted to disabled people's needs and in 2006, two further clubs made the necessary changes. The Committee asks what measures have been taken to enable people with disabilities to practise sports and cultural activities in an ordinary environment, in terms of aspects such as access, cost and adaptation.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 15§3 of the Revised Charter on the ground that there is no general anti-discrimination legislation to protect persons with disabilities, which explicitly covers the fields of housing, transport, telecommunications and cultural and leisure activities.

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

Paragraph 1 – Applying existing regulations in a spirit of liberality

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

Foreign population and migratory movement

The Committee does not have any information on trends in migratory movements and the foreign population in Lithuania. It asks for information of this type to be included in future reports.

Work permits

The Committee points out that the employment of foreign nationals is mainly governed by the Legal Status of Aliens Act. Foreign nationals wishing to earn a living in Lithuania who are not nationals of a member country of the European Economic Area usually require a work permit. The Committee notes that since 30 April 2004, the system of annual quotas for the employment of foreign workers has no longer been in force. Work permits are issued according to the needs of the national labour market where there is no Lithuanian candidate with the right qualifications to fill the vacancy.

The report states that since the end of 2006, from their second year of studies onwards, foreign nationals with a temporary residence permit for the purpose of studies may engage in a paid activity provided that it does not exceed twenty hours a week. People who were victims of human trafficking and have been given a temporary residence permit as a result may also engage in a gainful occupation without having to apply for a work permit.

The Committee asks for the next report to provide information on the documents that foreign nationals require to engage in a self-employed activity.

Relevant statistics

The report provides statistics on the number of work permits applied for, granted and rejected in 2005 and 2006, with the figures

concerning permits granted broken down according to the applicants' countries of origin. The Committee notes that, in 2005, of the 1,777 applications, 1,565 were granted (including 708 to nationals of States Parties), meaning that the rejection rate was about 12%. In 2006, the rejection rate was only 5.2%, as 3,168 of the 3,342 applications were granted. 1,525 of these granted permits were issued to nationals of States Parties.

The Committee recalls that its assessment of the degree of liberalism in applying existing regulations is based on figures showing the refusal rates for both first-time and renewal applications for work permits by nationals of States Parties (Conclusions XVII-2, Spain). Although the figures relating to applications for renewal are not available, given the low overall rate of rejection, the Committee considers that the situation is in conformity with Article 18§1 of the Revised Charter. However, it does ask for the next report to provide figures relating to applications for renewal, in addition to up-to-date statistics on first-time applications for work permits and for any permits that foreign nationals require to be self-employed.

Conclusion

The Committee concludes that the situation in Lithuania is in conformity with Article 18§1 of the Revised Charter.

Paragraph 4 – Right of nationals to leave the country

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

Article 32 of the Lithuanian Constitution enshrines the principle of freedom of residence and movement, including the freedom of nationals to leave the country. Restrictions on this are authorised only if they are prescribed by law and necessary for maintaining national security or public health or for enforcing judicial decisions.

Only the State is entitled to act as an intermediary for the employment of Lithuanian nationals abroad and that responsibility for exercising this prerogative is assigned to the national employment service or a body certified for the purpose by the Ministry of Social Security and Labour. In reply to the Committee's question, the report states that under Article 86 of the Labour Code, use of employment agencies is optional. In this respect, the Committee asks for

confirmation that Lithuanian citizens are free to seek work in the other States Parties without the involvement of the aforementioned bodies.

The Committee notes that there is no information in the report about current legislation restricting the right of nationals to leave the country or, moreover, about any of the other points raised in the previous conclusion (Conclusions 2005). It therefore asks again for the next report to provide a complete list of practical circumstances in which Lithuanian citizens may be prevented from leaving the country, and their legal basis. It also asks whether people whose right to leave the country is restricted have legal remedies to challenge any such decision.

Conclusion

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

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

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

Equal rights

The Committee takes note that the Law on Equal Opportunities of Women and Men was amended in 2005. Some of the changes introduced by the law are the inclusion of sexual harassment as a prohibited form of discrimination; the setting out of the same retirement age for men and women in professional pension systems; the laying down of a broader definition of the concept of a breach of equal rights between women and men; or providing a better protection of persons filing discrimination complaints. The Committee considers as a positive development the amendments to the Law on Equal Opportunities, and wishes to be informed on the implementation of these changes (and on any subsequent amendments). For a more detailed overview of the legal framework on the right to equal treatment between men and women, the Committee refers to its previous conclusions (Conclusions 2004 and 2006).

Concerning the Equal Opportunities Ombudsman, the report indicates that discrimination cases can be brought either before this body or to the courts. Practice shows that in sex discrimination cases, persons mostly refer to the Ombudsman. A decision of the Ombudsman can be appealed in the courts.

As regards the principle of equal pay, the Committee notes it is contained in both the Labour Code and the amended Law on Equal Opportunities of Women and Men. The report states that the Tripartite Council of the Republic of Lithuania developed in December 2004 a methodology for assessing work and positions, and recommended that it be disseminated to social partners. The Committee recalls that Article 20 requires that appropriate methods of pay comparison must be devised enabling employees to compare the respective values of different jobs, and that pay comparisons to determine work of equal value beyond a single employer must be possible. It therefore asks the next report to provide more information on the above-mentioned methodology, and whether it covers the question of pay comparison.

The report does not indicate whether there is legislation or regulations in Lithuania which aim at encouraging social partners to include the issue of equal pay in collective agreements. The Committee recalls in this respect that the promotion of equal treatment of the sexes and equal opportunities for women and men by means of collective agreements is a prerequisite for the effectiveness of the rights in Article 20. It therefore asks for more information in the next report on how equal treatment for women and men is being promoted by means of collective agreements, in particular as regards equal pay.

Specific protection measures

The Committee will take into account the information provided in the report on measures of protection against dismissal of pregnant women, and in support of the reconciliation of work and family life, the next time it examines Articles 8 and 27.

Under the current version of the Law on Equal Opportunities of Women and Men, there is no discrimination when specific occupations can only be performed by a person of a particular sex (Article 2, paragraph 6, point 5). The report indicates that an amendment to this provision is currently being prepared with a view to making this exception stricter. The draft amendment provides that certain occupations can be performed by persons of a given sex, where this is an objective, legitimate and determining professional requirement. The Committee asks to be kept informed on the adoption of this amendment and for information on the specific occupational activities which might be excluded from the principle of equal treatment.

Position of women in employment and training

The Committee notes from Eurostat[1] that the female employment rate (women aged 15-64) in 2006 was 61%, which means that Lithuania has already reached the target set out in the European Strategy for Jobs and Growth for 2010 (60%). The employment rate for men in 2006 was 66.3%.

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[1] Eurostat, Labour Force Survey (LFS), annual averages

The female unemployment rate (women aged 15 and over) in 2006 was 5.4%, slightly lower than the rate for men which was 5.8%.

The share of women employees working part-time was 10.3% in 2007 while the corresponding figure for men was 6.5%.

The share of women employees with temporary contracts was 2.7% in 2006 while the rate for men was 6.4%.

The Committee also notes from Eurostat that the pay gap between women and men (difference between men's and women's average gross hourly earnings as a percentage of men's average gross hourly earnings) was 15% in 2006, which is the average for EU-27 countries since 2003.

The report indicates that one of the most significant factors having an impact upon the pay gap is the segregation of the labour market, primarily at the horizontal level, with so-called "female" and "male" types of work and sectors. Statistics show that the amount of remuneration is much lower in economic sectors where female employees dominate as compared to those where male employment prevails. The Committee asks for information on measures taken to close the pay gap.

Measures to promote equal opportunities

A new National Programme for Equal Opportunities of Women and Men for 2005-2009 has been adopted. A number of measures are foreseen to improve employment opportunities for women, reconcile work and family life, increase business opportunities for women and promote their economic activities. The Committee asks to be informed on the results and implementation of this programme.

The Committee recalls that Recommendation No. (2007) 17 of the Committee of Ministers to member States on gender equality standards and mechanisms, adopted on 21 November 2007, should be taken into consideration by the authorities when preparing measures and policies on equal treatment and opportunities between men and women.

Conclusion

The Committee concludes that the situation in Lithuania is in conformity with Article 20 of the Revised Charter.

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

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

The report provides answers to questions raised by the Committee in its Conclusions 2005 but does not address the requests for information made in Conclusions 2007 which are therefore reiterated hereunder.

Scope

In its previous conclusions on Article 24 (Conclusions 2005 and 2007) the Committee found that the scope of the provisions dealing with the protection against dismissal is in conformity with the requirements of the Revised Charter.

Obligation to provide a valid reason for termination of employment

The Committee refers to the assessment of the situation in Lithuania as regards the valid reasons for termination of employment in its previous conclusion.

It reiterates its request for information on the situation in both the private and public sector as regards termination of an employment contract on the ground of age and asks what is the procedure in such cases permitted by section 129§3 of the Labour Code. The Committee recalls that dismissal on the ground of age will not constitute a valid reason for termination of employment unless a termination is, within the context of national law, objectively and reasonably justified by a legitimate aim such as a legitimate employment policy, labour market objectives or the operational requirements of the undertaking, establishment or service and provided that the means of achieving that aim are appropriate and necessary. It wishes the next report to indicate whether the legal framework complies with this approach and, in the affirmative, how.

The Committee also reiterates its question under what circumstances an employee sentenced to a term of imprisonment may be dismissed. It recalls in this context that a prison sentence delivered by a court, can be a valid ground for termination of an employment contract if such sentence is delivered for employment-related

offences. This is not the case in the event of prison sentences for offences unrelated with the person's employment, which cannot be considered a valid reason for termination unless the length of the custodial sentence prevents the employee from carrying out his/her work (Conclusions 2005, Estonia).

Prohibited dismissals

The Committee examined the situation as regards dismissals prohibited under Lithuanian law in its Conclusions 2005 and 2007 and found the situation to be in conformity with the Revised Charter.

Remedies and sanctions

The Committee had also previously considered that the system of remedies and sanctions in relation to unfair dismissals as stipulated in the Labour Code is in conformity with Article 24 of the Revised Charter.

Conclusion

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

Article 25 – Right of workers to the protection of their claims in the event of the insolvency of their employer

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

The Committee recalls that under the Corporate Bankruptcy Act, a company is considered insolvent when bankruptcy proceedings have been initiated against it by judicial or non-judicial means. In the event of insolvency, workers' claims are protected by a guarantee institution. Under the Guarantee Fund Act, payments are made to employees although the company is bankrupt and the employer is unable to pay them the money they are owed, or who loose their job because the company has been liquidated following bankruptcy proceedings.

The Committee notes that the Guarantee Fund Act was amended during the reference period. As a result, since 1 May 2006, the Fund covers the following claims:

– claims in respect of salaries for the three months immediately preceding the bankruptcy proceedings up to a maximum of three times the average gross monthly wage;
– monetary compensation for unused annual leave up to a maximum sum equivalent to one month of the minimum wage;
– severance pay restricted to two months' worth of the minimum wage;
– compensation for paid periods of inactivity up to a maximum of one month's worth of the minimum wage.

The Guarantee Fund also compensates for damage caused as a result of an industrial accident or occupational disease, provided that it is not for the state to pay such compensation.

The report states that the minimum wage, which was 550 Lithuanian Litas (LTL, approximately € 159) on 1 July 2005, was increased to LTL 600 (about € 173) on 27 March 2006.

The Committee considers that the guaranteed amounts payable in respect of wage claims and paid leave are sufficient to satisfy Article 25 of the Revised Charter. It asks, however, for the next report to describe the situation as regards workers' claims in respect of amounts owed for absences other than paid leave. In this connection, the Committee points out that according to the appendix

to the Revised Charter, workers' claims in respect of amounts owed for paid absences other than leave must be covered for a stipulated period, which, under a guarantee system, must be no less than eight weeks before the insolvency or the termination of the employment relationship.

In reply to the Committee's question, the report states that in 2005, 58.7% of workers' claims were satisfied through the guarantee system. The figure was 68.3% in 2006. According to the report, the average time that elapses between the filing of claims and the payment of any sums owed is four months. The Committee asks the next report to summarise the main reasons for more than 30% of the claims not being granted.

The Committee points out that the Guarantee Fund Act applies to all companies, public bodies, banks and credit institutions. It does not apply to staff of bodies financed by the state budget or municipal budgets or to civil servants. The Committee asks whether there is another form of protection for these categories.

According to the report, employees who have a holding of 50% or more in the company, either alone or with a partner or close relative, are not protected by the Guarantee Fund unless the shareholders cannot be held responsible for the company's bankruptcy. Neither does the Guarantee Fund protect employees who negotiated an employment contract with a company which was known to be bankrupt already, either because this was announced publicly, or because the company's creditors had already began bankruptcy proceedings or at least announced their intention to do so.

Conclusion

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

Chapter 15 – Conclusions concerning Articles 1, 9, 10, 15, 18, 20, 24 and 25 of the Revised Charter in respect of Malta

Introduction

The function of the European Committee of Social Rights is to assess the conformity of national law and practice with the European Social Charter and the Revised Charter. In respect of national reports, it adopts "conclusions" and in respect of collective complaints, it adopts "decisions".

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

The European Social Charter was ratified by Malta on 4 October 1988 and the Revised European Social on 27 July 2005. The time limit for submitting the 1st report on the application of the Revised Charter to the Council of Europe was 31 October 2007 and Malta submitted it on 10 December 2007. On 5 May 2008, a letter was addressed to the Government requesting supplementary information regarding Article 1§3. The Government submitted its reply on 30 May 2008. Supplementary information regarding Articles 10 and 15 was submitted on 16 October 2008.

This report was the first under the new system for the submission of reports adopted by the Committee of Ministers.[2] It concerned the accepted provisions of the following articles belonging to the first thematic group "Employment, training and equal opportunities":

– the right to work (Article 1),
– the right to vocational guidance (Article 9),
– the right to vocational training (Article 10),

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

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

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

Malta has accepted these articles with the exception of Article 18§§1, 2 and 3.

The applicable reference period was 1 September 2005 – 31 December 2006.

The present chapter on Malta concerns 16 situations and contains:

– 5 conclusions of conformity: 1§1, 10§1, 10§3, 18§4 and 25 ;
– 8 conclusions of non-conformity: 1§2, 1§4, 9, 10§2, 10§4, 15§1, 15§2 et 24.

In respect of the 3 other situations concerning Articles 1§3, 15§3 and 20, the Committee needs further information. The Government is therefore invited to provide this information in the next report on the articles/provisions in question.

The following report from Malta deals with the accepted provisions of the following articles belonging to the second thematic group “Health, social security and social protection”:

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

The deadline for the report was 31 October 2008.

Article 1 – Right to work

Paragraph 1 – Policy of full employment

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

Employment situation

The Committee notes from Eurostat that growth in Malta increased from 0.1% in 2004 to 3.2% in 2006.

The employment rate rose during the reference period from 57.9% in 2004 to 59.4% in 2006. The Committee notes, however, that the level is still far higher for men than for women (74.5% and 34.9% in 2006, respectively), even though the gap narrowed slightly during the reference period.

Total unemployment rate remained stable during the reference period (7.3% in 2005 and 2006). The Committee notes that this is lower than the EU-15 average (7.7% in 2006). Youth unemployment rate (for the 15-24 age group), which was 16.3% in 2006, showed a slightly downward trend. The female unemployment rate remained more or less stable (8.9% in 2006).

However, the proportion of long-term unemployed among the total unemployed decreased markedly during the reference period, from 46.7% in 2004 to 40.2% in 2006.

In reply to the Committee's question, the report states that 356 persons with disabilities were registered as unemployed during the reference period, which would represent an unemployment rate of approximately 5.9%. The report further indicates that no employment and unemployment statistics for foreign nationals are available. The Committee asks whether there are any measures taken in respect of foreign nationals.

Employment policy

Various measures to combat unemployment through job creation and training were put in place during the reference period. All were aimed at specific categories of persons.

Certain initiatives, such as the *Work Start Scheme,* were intended to help inexperienced adults find work or give them the benefit of

measures to upgrade their skills in the event of vocational rehabilitation.

Various measures were aimed to assist long-term unemployed, young people, women and persons with disabilities during the reference period.

The *Employment Training Placement Scheme* (ETPS) is intended to encourage employers to recruit unemployed persons, essentially long-term unemployed, and give them suitable training, through the payment of a subsidy. 69 persons benefited from it during the reference period. These training initiatives are complemented by the *Training and Employment Exposure Scheme* (TEES) which also targets workers aged over 40, and the training courses organised by the Employment and Training Corporation (ETC). A total number of 1638 long-term unemployed participated in training sessions during the reference period. About 10% of all long-term unemployed obtained a job thanks to these measures.

Concerning young people, particularly long-term unemployed, the *Job Experience Scheme* and the *Active Youth Scheme* have the aim of helping them to gain initial vocational experience. In all, 563 young people benefited from these schemes during the reference period.

Specific arrangements for training or for participation in various projects are also directed at women, particularly where disadvantaged. Persons with disabilities benefit from training sessions organised by the Employment and Training Corporation in co-operation with the Eden Foundation and the Richmond Foundation, besides the *Employment Training Placement Scheme* mentioned above. Given the low female employment rate, the Committee asks what measures are envisaged to foster female employment.

It also asks that the next report specify the total number of beneficiaries of all these measures to activate the unemployed, and the activation rate.

The report points out that an evaluation of the active measures initiated during the previous reference period is being conducted to determine the impact of the measures in terms of finding lasting employment. The Committee wishes to be kept informed.

In reply to the Committee's question, the report stresses that total expenditure on employment policy (active and passive measures) decreased from 2,113,510 € in 2005 to 1,816,666 € in 2006, which

according to Eurostat represents 0.5% of GDP in 2005 and 0.3% of GDP in 2006. The share spent on active measures indicated by the report is partly outside the reference period. The Committee requests up-to-date information in the next report and asks whether it is intended to increase the total amount of expenditure on employment policy.

Conclusion

The Committee concludes that situation in Malta is in conformity with Article 1§1 of the Revised Charter.

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

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

1. Prohibition of discrimination in employment

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

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

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

A description of the situation in Malta appears in Conclusions XVIII-1.

There is a general ban on discrimination in Article 45 of the Constitution and Article 2 of the Employment and Industrial Relations Act.

Under the Equal Treatment in Employment Regulations, indirect discrimination occurs where an apparently neutral provision, criterion or practice would put persons of a particular race or ethnic origin or having a particular religion or religious belief, disability, age, sex, or sexual orientation at a disadvantage when compared with other persons, unless this is objectively justified, appropriate and necessary.

Persons who consider that they have suffered discrimination on one of these grounds may refer the matter to the industrial tribunal or the ordinary courts.

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

According to the report, persons found guilty of discrimination under the Equal Treatment in Employment Regulations are liable to a fine not exceeding € 2329.37 or to imprisonment for a period not exceeding six months or to both. It adds, however, that there is no upper limit on the compensation that may be awarded to the victim.

The Committee again notes that Maltese law allows associations, organisations or other legal entities with a legitimate interest in ensuring conformity with equal treatment within the meaning of Article 1§2 of the Revised Charter to bring cases of alleged discrimination before the courts and to support individuals bringing such cases. So far, no cases concerning unequal treatment have been brought before the courts by associations, organisations or other legal entities. The Committee asks to be informed when such actions occur.

The Committee points out that under Article 1§2 of the Revised Charter, states may make foreign nationals' access to employment subject to possession of a work permit, but they may not issue a

general ban on nationals of states party occupying jobs for reasons other than those set out in Article G. Restrictions on the rights embodied in the Revised Charter are only acceptable if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society to safeguard the rights and freedoms of others or protect the public interest, national security, public health or morals. The only jobs from which foreigners may be barred are therefore ones that are inherently connected with the preservation of law and order or national security and involve the exercise of public authority (Conclusions XVIII-1, Malta).

The Committee notes that citizens of EU member states, citizens of other countries to which the EU provisions on free movement of persons apply, and their spouses and children, even if these are nationals of third countries, may be employed in the public service and the public sector. Third country nationals may be employed for a definite period if there are no suitable candidates in the aforementioned categories. The Committee notes that this excludes nationals of certain states party. This therefore constitutes discrimination based on nationality that is incompatible with Article 1§2 of the Revised Charter.

The Committee notes that there are no occupations outside the public service that are reserved for nationals.

2. Prohibition of forced labour

Prison work

Prisoners are allowed to perform work for private enterprises within prisons against payment. The work is performed voluntarily. Prisoners are also allowed to work outside prisons during the last three months of their sentence. The work depends on what is offered by the employer.

Prisoners are offered a wide variety of work within prisons, including bookbinding, tailoring, carpentry, masonry, electrical work, cleaning, toy assembly and bakery.

Employment conditions are related to behaviour, level of trust, length of sentence and prisoners' personal capabilities. Otherwise, they resemble normal working conditions.

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

Privacy at work

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

Restrictions linked to the fight against terrorism

The Committee notes that there is no legislation to combat terrorism or incitement to terrorism that explicitly precludes persons from taking up certain employment.

Part-time work

Article 25 of the Employment and Industrial Relations Act states that part-time employees shall not be treated in a less favourable manner than comparable whole-time employees solely because they work part-time, unless different treatment is justified on objective grounds. Legal Notice 427 of 2002 issued under the Act is designed to remove discrimination against part-time workers and improve the quality of their work. In particular, it regulates part-time workers' entitlement to participate in vocational training and fill vacancies for full time employment. The industrial tribunal is empowered to hear any complaints concerning part-time work.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 1§2 of the Revised Charter on the ground that access to posts in the public service and public sector is too restricted for nationals of other States Parties.

Paragraph 3 – Free placement services

The Committee takes note of the information provided in Malta’s report.

According to the report, the annual number of job vacancies notified to the public employment services increased from 7,531 during the period 2004/2005 to 8,738 during the reference period.

At the same time, the placement rate noticeably decreased – from 17% to 11.5%. The report also states that a number of placements are also made by private agencies, about 30% of all job vacancies notified to the public employment services in 2006 (43.5% in 2005). The Committee observes that the placement rate achieved by the public employment services remains very low and wishes to have the Government's comments on the subject.

In reply to the Committee, the Government specifies that a Personal Action Plan is worked out by the Employment and Training Corporation (ETC) for every registered jobseeker with a view to increase the placement rates. Various job fairs and open days held with employers are also organised from time to time.

In reply to the Committee, the Government indicates that the average time taken to fill vacancies is two weeks.

The public employment services consist of a central agency, the Employment and Training Corporation (ETC) and its four branches, located in Malta and Gozo. They are open both to job seekers and to persons already in employment.

In reply to the Committee, the Government states that total staffing in ETC amounts to 191.

It notes that, in reply to the Committee, the number of jobseekers per staff in average is about 250.

Where the private employment agencies are concerned, under the terms of the Employment and Industrial Relations Act, they may employ jobseekers by applying the public employment services after obtaining permission from the Department of Industrial and Employment Relations. In addition, these private agencies must regularly forward to the public employment services the list of jobseekers placed in employment. A number of agencies also offer training. The services delivered by the private agencies are free of charge.

According to the report, the trade unions and employers' organisations participate in the management of the ETC in so far as they sit

on its Managing Board. Board members are appointed by the Ministry for Education, Youth and Employment.

Conclusion

The Committee concludes that the situation in Malta is in conformity with Article 1§3 of the Revised Charter.

Paragraph 4 – Vocational guidance, training and rehabilitation

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

As Malta has accepted Article 9, 10§3 and 15§1 of the Revised Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to guidance and vocational training for persons with disabilities are dealt with under these provisions.

The Committee found that the situation with regard to vocational guidance (Article 9) is not in conformity with the Revised Charter on the ground that it has not been established that the right to vocational guidance in the education system is guaranteed.

Concerning the vocational training of workers (Article 10§3), it considered that the situation was in conformity with the Revised Charter.

Finally, the Committee found that the vocational education and training of persons with disabilities (Article 15§1) is not in conformity with the Revised Charter on the ground that it has not been established that mainstreaming of persons with disabilities is effectively guaranteed in training.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 1§4 of the Revised Charter.

Article 9 – Right to vocational guidance

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

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

Vocational guidance within the education system

a. Functions, organisation and operation

Pupils and students are entitled to vocational guidance at school, the Information and Student Support Centre and the Malta College of Arts, Science and Technology – MCAST. They receive individual counselling, visits to different sectors of the economy and information on labour market opportunities.

b. Expenditure, staffing and number of beneficiaries

Although the Committee requested it in the last two conclusions (Conclusions XVI-2 and XVIII-2), the report contains no information on expenditure on the guidance services. Nor are there any precise figures on the number of beneficiaries. In view of this repeated lack of information, the Committee considers that Malta has failed to establish that there is a guaranteed right to vocational guidance in the education system and concludes that the situation is not in conformity with the Revised Charter in this respect.

Vocational guidance in the labour market

a. Functions, organisation and operation

Adults may also use the vocational guidance services of the Malta College of Arts, Science and Technology, and are entitled to individual counselling free of charge from qualified staff.

b. Expenditure, staffing and number of beneficiaries

According to the report, between October 2005 and September 2006, 2 512 profile interviews and 7 111 general interviews with unemployed persons were conducted by the ETC employment advisors in Malta and 2 195 personal action plans were drawn up. The Gozo branch conducted 676 profiling interviews and 1 198

follow-up general interviews over the same period. The Committee again asks what percentage of the unemployed receives vocational guidance. It also asks whether supply satisfies demand.

Despite the Committee's request, the report supplies no information on the amount spent on guidance services, their staffing or the total number of beneficiaries. It asks for this information to appear systematically in each report.

Dissemination of information

In the absence of information in the report, the Committee asks whether means other than the Internet – such as leaflets or the media – are used to disseminate guidance information.

Equal treatment

In answer to the Committee, the report states that vocational guidance is provided free of charge to all members of the public, including persons with disabilities and foreign nationals.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 9 of the Revised Charter on the ground that it has not been established that there is a guaranteed right to vocational guidance in the education system.

Article 10 – Right to vocational training

Paragraph 1 – Promotion of technical and vocational training and the granting of facilities for access to higher technical and university education

The Committee takes note of the information provided in Malta's report and observes that it does not answer any of the questions asked in previous conclusions (Conclusions XIV-2, XVI-2 and XVIII-2).

Secondary and Higher education

The Committee notes from another source[1] that admission requirements to the higher education are the Matriculation Certification and the passes in the Secondary Education Certificate examination at Grade 5 in Maltese, English and mathematics. In case of foreign students, qualifications that give them access to tertiary education in their country of origin are favourably considered as long as these qualifications are of comparable length and standard to the general entry requirements.

The Committee observes from the same source that in order to ensure better links between the world of education and employment the universities have set the following priorities in the strategic plan for 2002-2006:

– To ensure that courses content reflects the latest developments to meet the present and future needs of local industry and commerce;
– To ensure that graduates obtain the know-how needed by the labour market, work competencies and entrepreneurial skills;
– To establish a careers office to work closely with leaders in local economy, commerce;
– To continue to serve as a model employer by adopting innovative measures to stimulate productivity, quality services and harmonious labour relations.

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[1] http://www.eurydice.org/portal/page/portal/Eurydice/EuryContents?country=MT&lang=EN&expandMenu=false

The Committee wishes to be kept informed about the practical implementation of these priorities as it recalls that under Article 10§1 the states are obliged to take measures to make general vocational and higher education qualifications relevant from the perspective of professional integration in the job market. The Committee reiterates its previous question whether there are mechanisms for recognition/validation of qualifications obtained through vocational training and education and how these qualifications are geared towards helping students find a place in the labour market. The Committee holds that if this information is not provided in the next report, there will be nothing to show that the situation is in conformity with the Charter.

Measures to facilitate access to education and their effectiveness

The Committee notes from Eurydice that in 2006 there was a total of 169 state schools and a total of 134 non-state schools (church schools and independent schools). A total of 9,508 students were enrolled in universities.

In 2004 the overall expenditure on education represented 5,8% of GDP and 5.9% in 2006. Out of total expenditure 21.17% was spent on primary education and 11.05% on tertiary.

In its previous conclusion the Committee found that the situation in Malta was not in conformity with Article 10§1 of the Charter on the grounds that it had not been established that the nationals of other States Party lawfully resident or regularly working in Malta were guaranteed equal treatment as regards access to education and training, including primary, secondary and higher education as well as vocational training. From the supplementary information provided by the Government of Malta the Committee notes that nationals of other States party to the Charter or the Revised Charter enjoy the equality of access to education. There is no length of residence requirement and a foreign student can enter educational institutions from the first day of arrival in Malta. The Committee holds that the situation in Malta is in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Malta is in conformity with Article 10§1 of the Revised Charter.

Paragraph 2 – Apprenticeship

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

In its previous Conclusion (Conclusions XVIII-2) the Committee took note of the existing two types of apprenticeship schemes and asked for detailed information regarding apprentices' pay and conditions of termination of apprenticeship contracts. In this connection it notes from the report that apprentices' hours of work do not exceed the ordinary hours applicable to the employer's establishment. Time allotted to theoretical instruction is considered as part of the normal working hours. As regards the social security contributions payable by the employer the report states that they constitute 10% of the weekly wage up to a maximum of € 4.38 for apprentices under 18 years of age and up to a maximum of € 7.94 for those over 18 years of age. Apprentices receive wages or maintenance grants both of which are defined and vary by year. A one-time grant of € 326.11 is paid to cover expenses related to the purchase of educational equipment. The Committee takes note of the profile of trainees aged 16-24 who attended ETC training courses and notes that the highest number was in basic skills courses followed by courses offered by the Night Institute for Further Technical education (NIFTE) and by IT related courses. The Committee repeats its question concerning the conditions of termination of apprenticeship contracts.

The Employment and Training Corporation implements the Basic Employment Training as part of a larger project, co-funded by the European Social Fund. The aim of the scheme is to provide basic employment skills to young school leavers who for one reason or another are coming out of the present educational system with little or no skills.

In its previous conclusion the Committee held the situation in Malta was not in conformity with Article 10§2 of the Charter as there was a repeated lack of information concerning the equality of treatment of nationals of other States Parties lawfully resident in Malta as regards access to apprenticeships. It notes that the report does not again provide this information. Therefore the Committee reiterates its previous conclusion of non-conformity on this point.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 10§2 of the Revised Charter as it has not been established that nationals of other States Parties lawfully resident or regularly working in Malta are guaranteed equal treatment as regards access to apprenticeships.

Paragraph 3 – Vocational training and retraining of adult workers

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

In its previous conclusions (Conclusions XVI-2 and XVIII) the Committee asked for information concerning total spending on vocational training for employed and unemployed adults. Since the report does not provide this information, the Committee reiterates this question.

The Committee notes from another source[1] that between 2000 and 2004 the participation in vocational training has increased by 65%. This increase is attributed to the launch of the College of Arts, Science and Technology of Malta (MCAST) which is an umbrella for vocational and technical education. Between 2000 and 2005 the public funding for this institution has increased from € 1.4 million to € 9.7 million.

Employed persons

The Committee notes that each institute of the MCAST deals with a particular vocational area. Since 2005 with the support from the European Social Fund the MCAST offered courses in reskilling and retraining of workers in the mechanical engineering industry where 186 participants were certified, in electronics engineering industry resulting in 153 certifications as well as in building and construction industry were 166 participants obtained a certificate.

The Committee takes note of the number of adult workers who participated in training or retraining measures offered by the Employment and Training Corporation in Malta and Gozo, such as IT

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1 http://libserver.cedefop.europa.eu/vetelib/eu/pub/cedefop/eknowvet/2006_TO_MT.pdf

related courses, basic skills courses, small business management courses, trade courses etc.

In relation to employed persons the Committee asks again whether there is legislation authorising individual leave for training and, if so, under what conditions and on whose initiative, how long it lasts and what determines whether it is paid or unpaid.

Unemployed persons

The Committee notes from Eurostat that the unemployment rate amounted to 7,3% both in 2005 and 2006. Youth unemployment stood at 16,4% in 2005 and 16,3% in 2006.

The Committee takes note of the initiative undertaken by the Employment and Training Corporation to assist adult women wishing to take up or resume employment. It also notes the training courses entitled Employability Skills for Women Returning to the workforce where 276 participants were certified.

In previous conclusion (Conclusions XVIII-2) the Committee held that the situation in Malta was not in conformity with Article 10§3 of the Charter as it had not been established whether nationals of other States Parties lawfully resident in Malta were guaranteed equal treatment as regards access to continuing training. The Committee notes from the report that the equality of access to continuing training is ensured to all foreigners legally resident or regularly working in Malta.

Conclusion

Pending receipt of the information provided the Committee concludes that the situation in Malta is in conformity with Article 10§3 of the Revised Charter.

Paragraph 4 – Long term unemployed persons

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

The Committee notes from Eurostat that in 2005 the share of long-term unemployment in total unemployment in Malta amounted to 46% whereas in 2006 it decreased to 40,2%.

The Committee observes from the report that with a view to reintegrating long-term unemployed persons in the labour market the Employment and Training Corporation (ETC) embarked on a project where all long-term unemployed people (over 3000 registered) were asked to attend a compulsory interview in order to choose two ETC training courses. Interviewers were engaged for this purpose who compiled a report on qualifications, skills, experience and motivation of these individuals who were then referred to training programmes according to their work preferences and qualifications. This project was completed by 2006. The Committee wishes to be informed about the results of this exercise and namely, the percentage of the long-term unemployed who participated in training and have successfully been reintegrated into the labour market.

The Committee takes note of other training courses organised by ETC such as the Back-to-Work programme and the Training and Employment Exposure Scheme (TEES) which was a ESF funded project for unemployed workers aged over 40. TEES was launched in 2005 and completed in 2006. Within this scheme 3,204 persons were invited to participate in TEES courses. 350 men and 110 women actually started the scheme while 213 retained their job when the scheme came to an end. Another 40 clients found alternative employment during the scheme itself and 8 left the scheme to take up self-employment.

The Committee asks whether the equality of treatment of nationals of other States Parties lawfully resident or regularly working in Malta are guaranteed as regards access to training for the long-term unemployed.

The Committee concludes that the situation in Malta is in conformity with Article 10§4 of the Revised Charter.

Paragraph 5 – Facilities

The Committee takes note of the information provided in Malta's report. Malta has not accepted points b and c of 10§5.

Fees and charges (Article 10§5 a)

In its previous conclusion (Conclusions XVIII-2) the Committee noted that the situation as regards fees and charges for vocational education was in conformity with the Charter. It observes from the

report that the courses organised by the Employment and Training Corporation for unemployed persons are free of charge. The Corporation also operates the Training Subsidy Scheme which is intended to assist self-employed persons and persons employed in enterprises. Assistance is provided in the form of a training grant. Courses offered by the MCAST are also provided free of charge to all adults, except for evening courses which are fee-charging. However, senior citizens are exempt from these charges.

The Committee notes from Eurydice that no fees are charged to Maltese and EU students for full-time undergraduate day courses and no registration fee is payable. Non-EU students pay tuition fees for all courses. The Committee asks whether equality of treatment is guaranteed to non-EU students lawfully resident or regularly working in Malta as regards tuition fees.

Efficiency of training (Article 10§5 d)

In its previous conclusions (Conclusions XVI-2 and XVIII-2) the Committee asked for information about any monitoring and assessment measures taken in consultation with employers' organisations and trade unions to ensure that vocational training courses for young people are effective. The Committee notes that the report again does not provide this information. The Committee holds that it has not been established that the measures to monitor the efficiency of vocational training for young workers are adequate. Therefore it concludes that the situation in Malta is not in conformity on this point.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 10§5 of the Revised Charter as it has not been established that the measures to monitor the efficiency of vocational training for young workers are adequate.

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

Paragraph 1 – Education and training for persons with disabilities

The Committee takes note of the information provided in Malta's report as well as in the additional information submitted on 16 October 2008.

The Committee reiterates that the total number of persons with disabilities has to be communicated.

Definition of disability

The Committee has noted from information available on the web-site of the Maltese National Commission Persons with Disabilities (KNPD)[1] that a social concept of "disabled persons" is used by it. The Committee asks the next report to clarify how this concept concretely takes into account international classifications such as that endorsed by the WHO (International Classification of Functioning, Disability and Health – ICF 2001).

Anti-discrimination legislation

The Committee refers to its Conclusions XVI-2 for a description of the Equal Opportunities (Persons with Disability) Act of October 2000, which, *inter alia*, prohibits discrimination on the ground of disability in the fields of education and training.

Education

The Committee recalls that in its previous conclusions (Conclusions XVI-2 and XVIII-2), it found the situation was not in conformity with the Charter on the ground that persons with disabilities appeared not to be sufficiently integrated into mainstream educational institutions and no information was provided to indicate that the situation improved or that measures were taken to address the issue.

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[1] See "Guidelines towards an inclusive society and a positive difference in the lives of Maltese and Gozitan disabled people", published by the KNDP in December 2007, available at: http://www.knpd.org.

On the basis of the additional information provided in October 2008, the Committee notes that the situation improved during the reference period: in kindergartens, primary and secondary education classes, out of a total of 69 055 students 1 499 students with individual education needs were in mainstream schools whilst only 286 such students were in special schools. The Committee also observes that numerous measures were taken and others are planned to further strengthen the inclusive education policy. It notes in particular that in December 2004, the Minister of Education appointed a working group to review inclusive and special education. The Committee requests the next report to contain information on the results of this review exercise and the impact of the other measures taken.

In its previous conclusion (Conclusions XVIII-2), the Committee had noted that 43 complaints concerning education had been filed with the KNPD. These mainly concerned the provision of the necessary educational support to allow students to follow the curriculum in mainstream education, including special arrangements for university examinations. The Committee asks the next report to highlight what measures have been taken to remedy the situation in practice.

Finally, the Committee further reiterates that it requires:

– information on access of children with intellectual disabilities to mainstreaming or special education,
– information on whether general teacher training incorporates special education as an integral component.

Vocational training

The Committee recalls that in its previous conclusions (Conclusions XVI-2 and XVIII-2), it found the situation not to be in conformity with the Charter on the ground that only a low number of persons appeared to be integrated into mainstream vocational training and no information was provided to demonstrate that the situation improved.

As none of its previous specific requests concerning vocational training and higher education was answered by the report, the Committee reiterates that it requires:

– the number of persons with disabilities attending mainstream vocational training and the other forms of training available,
– information on the participation of persons with disabilities in higher education.

As regards information about forms of training available, the Committee refers to its conclusion under Article 15§2 for its assessment and specific queries concerning the Bridging the Gap Scheme, the training offered through the Richmond Foundation and the Eden Co-operative Society programmes.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 15§1 of the Revised Charter on the ground that it has not been established that mainstreaming of persons with disabilities is effectively guaranteed in training.

Paragraph 2 – Employment of persons with disabilities

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

The Committee notes that in 2006, the number of persons with disabilities registered in the National Register of Disabled Persons maintained by the National Commission Persons with Disabilities (NCPD) in the age bracket 15-64 was of 4,884. It also observes that other than this figure and the indication that 47 disabled persons found employment in the reference period, no other data on the employment of persons with disabilities is available. The Committee therefore finds that the situation is not in conformity with Article 15§2 of the Revised Charter as nothing in the report demonstrates that persons with disabilities enjoy effective equal access to employment.

Non-discrimination legislation

The Committee refers to its previous conclusions (Conclusions XVI-2 and XVIII-2) for the description of the 2000 Equal Opportunities (Persons with Disabilities) Act (EOA) and reiterates its previous questions concerning the implementation of the reasonable accommodation obligation as they were not addressed in the current report, i.e. :

a. How is the reasonable accommodation obligation implemented in practice?
b. Has the reasonable accommodation obligation given rise to cases before courts?

c. Has the reasonable accommodation obligation prompted an increase in employment of persons with disabilities in the open labour market?

Measures to promote employment

In reply to the Committee which requested information on measures in force to promote employment of persons with disabilities, the report highlights the following schemes and programmes:

– *Bridging the Gap Scheme*: supports a trainee in the transition period from unemployment to employment, offering him/her a period of work exposure with an employer. The employer and the Employment and Training Corporation (ETC) enter into an agreement regarding the work exposure period, whereby the trainee is placed on the scheme with the prospect of employment. The trainee is considered as a registered unemployed without the obligation to turn up for his/her weekly signing-up. Trainees receive a weekly allowance of € 81.53 from ETC while renouncing the rights to any Social Security benefits throughout the work exposure phase.

  The Committee asks the next report to indicate how many trainees with disabilities benefited from this scheme and what percentage of them entered a lasting work relationship thereafter.

– *Supported Employment Scheme*: supports unemployed persons who have a severe disability, offering them the opportunity to gain workplace skills required by employers, integrate within the labour market and have remunerative employment (while receiving ongoing support services from the ETC as well as their Disability Pension).

  In its previous conclusion, the Committee had noted that this scheme had as a goal the placement of 50 persons in gainful employment. The current report indicates that between October 2005 and September 2006, 47 persons were placed. However, it does not specify whether the figure concerns severely disabled persons only and whether they were placed in the open labour market or not. The Committee asks the next report to clarify.

– *Supported Employment Programme* (Richmond Foundation in conjunction with ETC): provides personalised training services to persons with mental health difficulties, with a view to ensuring them secure employment.

  The Committee asks the next report to indicate how many unemployed persons with mental health difficulties gained workplace skills under this programme and how many integrated the labour market thereafter.

– *Day Services of Aġenzija SAPPORT*: offer sheltered employment programmes aimed at skill teaching, problem management and social skills. Remuneration for such services is agreed on an individual basis.

  The Committee requests further information on these services as they appear to be training rather than sheltered employment. It also asks the next report to indicate the number of persons with disabilities taking advantage of such services.

– *Eden Co-operative Society Ltd programmes*: supports persons with disability with the necessary employability skills needed to find open employment and remain employed. This is achieved by providing different work experiences in real work environments.

  The Committee requests the next report to indicate how many disabled persons were supported by this Co-operative Society in finding employment in the open market and remaining in the working environment.

In reply to the Committee, the report clarifies that sheltered employment exists in Malta. However, it still does not provide any concrete details (figures, statistics) related to the employment of disabled persons in such protected employment. It again requests that this information be provided.

Conclusion

– The Committee concludes that the situation in Malta is not in conformity with Article 15§2 of the Revised Charter on the ground that it has not been established that persons with disability are guaranteed an effective equal access to employment.

Paragraph 3 – Integration and participation of persons with disabilities in the life of the community

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

Anti-discrimination legislation and integrated approach

The Committee recalls that the right of persons with disabilities to social integration provided for by Article 15§3 implies that barriers to communication and mobility be removed in order to enable access to transport (land, rail sea and air), housing (public, social and private), cultural activities and leisure (social and sporting activities). For this purpose Article 15§3 requires:

– the existence of comprehensive non-discrimination legislation covering both the public and private sphere in fields such as housing, transport, telecommunications and cultural and leisure activities and effective remedies for those who have been unlawfully treated;
– the adoption of a coherent policy on disabilities: positive action measures to achieve the goals of social integration and full participation of persons with disabilities. Such measures should have a clear legal basis and be coordinated.

The Committee notes that the Equal Opportunity (Persons with Disability) Act prohibits discrimination on the ground of disability. It asks whether this legislation applies to the areas covered by Article 15§3. It also asks for full information in the next report on the application of this legislation in practice and its impact in terms of integrating disabled persons in the life of the community. Similarly, the Committee asks whether integrated programming is applied by all authorities involved in the implementation of the policy for persons with disabilities.

Consultation

The National Commission on Persons with Disabilities is responsible for devising and implementing social integration policies for disabled persons. Six of its members are appointed by the prime minister and

at least half are persons with physical disabilities themselves or a family member with a mental disability.

Forms of economic assistance empowering persons with disabilities

According to the report, persons with disabilities are entitled to financial support to help them buy the necessary equipment (including vehicles) for them to retain a degree of independence. The Committee asks for the next report to provide details on all benefits and other forms of financial assistance available to persons with disabilities.

Measures to overcome barriers

Technical aids

The Committee refers to its statement of interpretation on Article 15§3 in the General Introduction to these conclusions.

It asks whether persons with disabilities are entitled to free technical aids or must contribute themselves to the cost. If an individual contribution is required, the Committee asks whether the state provides some financial contribution to the cost of obtaining technical aids. It also asks whether disabled persons are entitled to free support services, such as personal assistance or home help, when required, or have to meet some of the cost of such measures. The Committee finally asks whether mechanisms are in place to assess the barriers to communication and mobility faced by individual persons with disabilities and to identify the technical aids and support measures that may be required to assist them in overcoming these barriers.

Communication

The Committee notes from the report that the deaf people's association receives financial support for the maintenance of a sign language interpreting service. It asks what the legal status of sign language is.

It also asks if measures have been taken to promote access to the new information and telecommunication technologies.

Mobility and transport

Several measures have been taken to provide access to transport. A quarter of buses and ferries are accessible to persons with disabilities and there are reserved car parking bays for the disabled. The Committee asks what has been done to ensure that these rules are implemented in practice and how access to public road, rail, air and sea transport is guaranteed.

It also asks for information on whether free or reduced fares are available for persons with disabilities, where necessary to cover additional costs.

Housing

According to the report, the housing authorities offer some support to persons with disabilities to help them purchase or renovate their own accommodation. The Committee asks for the next report to provide information on grants available for individual persons with disabilities for housing renovation, lift construction and removal of obstacles to movement, as well as on the number of beneficiaries and the results achieved in promoting accessible housing.

Cultural and leisure activities

The Committee asks what is done to promote accessibility of sport and cultural activities (access, fees, special programmes, etc).

Conclusion

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

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

Paragraph 4 – Rights of nationals to leave the country

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

The Committee notes from the report that the situation which it previously found to be in conformity with the Charter is unchanged.

Pursuant to Article 44 of the Constitution, Maltese citizens enjoy freedom of movement, which includes the right to leave the country. Restrictions on that right are permitted for reasons very similar to those laid down in Article G of the Revised Charter, and there is a right of appeal against any measure imposing such a restriction.

The only restrictions which might exceed the limits laid down in Article G have never been applied and the special legislation necessary for applying them has never been enacted (see Conclusions XIII-2).

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

Article 20 – Right to equal opportunities and treatment in employment and occupation without sex discrimination

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

Equal rights

Article 14 of the Constitution of Malta declares that "the state shall promote the equal right of men and women to enjoy all economic, social, cultural, civil and political rights and for this purpose shall take appropriate measures to eliminate all forms of discrimination between the sexes by any person, organisation or enterprise; the state shall in particular aim at ensuring that women workers enjoy equal rights and the same wages for the same work as men". The prohibition of discrimination on the ground of sex is also contained in a number of other texts, namely the Employment and Industrial Relations Act 2002, the Equality of Men and Women Act of 2003, and the Equal Treatment in Employment Regulations 2004.

The Equal Treatment in Employment Regulations 2004 (L.N. 461 of 2004), as amended by L.N. 53 of 2007, guarantees most of the rights covered by Article 20. These regulations put into effect the principle of equal treatment in employment by laying down minimum requirements to combat discriminatory treatment on the grounds of, *inter alia*, sex.

Under these regulations, any person claiming to have been subjected to discriminatory treatment in relation to his or her employment may, within four months of the alleged breach, refer the matter to the Industrial Tribunal claiming to be reinstated in employment or seeking payment of damages. The Tribunal has competence to order financial compensation to the aggrieved party and/or reinstatement in cases of dismissal. The amount of compensation that may be awarded in such cases is not limited by legislation, which is in line with the Charter's case law. A person who feels aggrieved because the principle of equal treatment has not been applied to them can also institute an action for damages with the civil courts.

The Committee notes that Article 19(2) of the Equality for Men and Women Act provides for a shift of the burden of proof in gender discrimination cases. Thus, in determining cases of gender

discrimination, the Industrial Tribunal applies legislation which is in line with Article 20.

Victimisation against a person who has sought to enforce his/her rights is prohibited under both the Equality for Men and Women Act and the Employment and Industrial Relations Act.

The Committee notes that under the Equal Treatment in Employment Regulations 2004 any provision contrary to the principle of equal treatment in individual contracts or in collective agreements shall be considered null and void. It asks if the same applies when any such provision is contained in a law or regulation.

The report contains no information on one of the essential aspects of the right to equal opportunities in employment, that is, the right of men and women workers to equal pay for work of equal value. Prior to Malta's ratification of the Revised European Social Charter, the Committee had examined this question in respect of Malta under Article 4§3 of the 1961 Charter. In Conclusions XVI-2, the Committee found that the situation in Malta was not in conformity with Article 4§3 because of a failure to establish conformity with this provision in its last three reports: namely, a lack of information on, *inter alia*, the notion of remuneration, the possibility of looking outside the enterprise for comparative information, the system for bringing evidence in equal pay cases, compensation, and implementation of the principle of equal pay in the private sector (Conclusions XVI-2, Article 4§3).

The Committee notes from another source[1] that the main legislative provision on equal pay is found in the Employment and Industrial Relations Act 2002. Article 26(2) of this Act expressly prohibits "terms of payment (…) that are less favourable than those applied to an employee in the same work or work of equal value, on the basis of discriminatory treatment". Article 27 requires that the same rate of remuneration be applied to employees in the same class of employment for work of equal value. Compensation and redress measures are included in Article 28. This Act is supplemented by the provisions of the Equality of Men and Women Act of 2003, the relevant provisions of which (investigations by the National

[1] A 2007 Report on the "Legal Aspects of the Gender Pay Gap" by the European Commission's Network of legal experts in the fields of employment, social affairs and equality between men and women

Commission, remedies, shift of the burden of proof, etc) are also applicable in the area of equal pay. On the basis of this information, the Committee considers that Maltese legislation on equal pay covers the main points required under the Charter.

However, the Committee notes there are some problems of proof of unequal pay, namely difficulties regarding proof by reference to a suitable comparator. It recalls that under its case-law on this matter appropriate methods of comparison must be devised enabling employees to compare the respective values of different jobs, and that pay comparisons to determine work of equal value beyond a single employer must be possible. The Committee therefore asks the next report to provide information on the question of methods of pay comparison.

Specific protection measures

Under the Protection of Maternity Regulations 2003 (L.N. 439 of 2003), it is unlawful for an employer to dismiss a pregnant employee, or an employee who has recently given birth to a child or is breastfeeding. These Regulations also ensure that employees who are on maternity leave are entitled to all rights and benefits which may accrue during their absence, including the right to apply for promotions.

Measures of positive action for the purpose of achieving substantive equality between men and women are allowed under Maltese legislation. In this respect, the report makes reference to a project called EQUAL, carried out by the National Commission for the Promotion of Equality, which aimed at reaching out to the inactive segment of the Maltese population, particularly women, and encouraging them to enter, remain and progress in the labour market.

Position of women in employment and training

The Committee takes note from another source[1] that employment rates (women and men aged 15-64) in 2006 were: 34.9% of women, and 74.5% of men The employment rate of women in Malta is the lowest among all the EU-27 countries, and quite behind the target of

[1] Eurostat, Labour Force Survey (LFS), annual averages

reaching an employment rate for women of 60% by 2010 set out in the European Strategy for Jobs and Growth.

Unemployment rates (women and men aged 15 and over) in Malta in 2006 were: 8.9% for women, and 6.5% for men.

The share of women employees working part-time was 25.3% in 2007 while the corresponding figure for men was 4.1%.

The share of women employees with temporary contracts was 6.0% in 2006 while the rate for men was 2.7%.

The Committee also notes that the pay gap between women and men (difference between men's and women's average gross hourly earnings as a percentage of men's average gross hourly earnings) was only 3% in 2006, the lowest figure for all EU-27 countries.

Measures to promote equal opportunities

Until 2004, all Government Ministries had an Equality Focal Point which was responsible for all equality issues within that particular Ministry. The efforts to improve the gender equality machinery resulted in the setting up of the National Commission for the Promotion of Equality for Men and Women (NCPE) in 2004. This body is responsible, inter alia, for establishing policies in this field, proposing measures to cater for the needs of persons who are disadvantaged by reasons of their sex, and monitoring the implementation of policies.

Since 2005, the NCPE has been implementing, *inter alia*, projects on gender mainstreaming. The other body which is active in promoting equal opportunities is the Employment and Training Corporation, which has undertaken a number of specific measures to assist women choosing to be active in the labour market.

The Committee notes from another source[1] that whilst social partners are trying to increase gender equality through collective agreements, gender equality does not yet figure very prominently in collective bargaining. The Committee asks for more information in the next report on how equal treatment for women and men is being promoted by means of collective agreements.

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[1] European Industrial Relations Observatory (www.eiro.eurofund.eu/eiro/)

Conclusion

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

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

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

Article 24 of the Revised Charter obliges states to establish regulations with respect to termination of employment (at the initiative of the employer) for all workers who have signed an employment contract. To assess whether the regulations applied in cases of termination of employment are in conformity with Article 24, the Committee's examination will be based on:

– the validity of the grounds for dismissal under the general rules on termination of employment and increased protection against dismissal based on certain grounds (Article 24.a and the Appendix to Article 24);
– sanctions and compensation in cases of unfair dismissal and the status of the body empowered to rule on such cases (Article 24.b).

Scope

The rules regarding termination of employment are stipulated in Sections 33 to 42 of the Employment and Industrial Relations Act. The Committee asks whether these rules also apply to employees on fixed term contracts.

The Committee notes that pursuant to Section 36 (1) of the Employment and Industrial Relations Act the first six months of any employment contract shall be a probationary period unless the parties agree to a shorter probationary period. In the event of employees holding technical, executive, administrative or managerial posts whose wages are at least double the established minimum wage, the probationary period may be extended until up to one year. During the probationary period, the employment contract may be terminated at will by either party without assigning any reason.

The Committee has previously found that the exclusion of employees from protection against dismissal during a six months period regardless of the employee's qualifications violates Article 24 (Conclusions 2003, Italy) and holds the situation in Malta not to be in conformity with the Revised Charter in this respect.

The Committee further observes from the information provided in the report that public service employees are excluded from seeking redress from the Industrial Tribunal in the event of dismissals and asks what are the rules addressing protection of termination of employment and the related remedies for this category of employees.

Obligation to provide a valid reason for termination of employment

Section 36 (14) of the Employment and Industrial Relations Act provides that the employer may dismiss an employee without giving notice if there is a good and sufficient cause for such dismissal. The said provision further stipulates that an employer may not set up as a good and sufficient cause the fact that:

a) the employee is a member of a trade union;
b) the employee no longer enjoys the employer's confidence;
c) the employee contracts marriage;
d) the employee is pregnant or is absent from work during maternity leave;
e) the employee discloses information to a designated public regulating body regarding alleged illegal or corrupt activities being committed by his employer;
f) the employee has filed a complaint against the employer;
g) the business in which the employee is employed has undergone a transfer of ownership, unless the employer proves that the termination is necessary for economic, technical or organisational reasons entailing changes in the workforce.

The Committee asks the next report for further information on grounds that are considered to be "good and sufficient" with a view to justifying a dismissal. In this context it wishes the next report to provide a summary of significant case law showing how the valid grounds for termination of employment are interpreted by the competent courts in practice. It asks in particular to what extent employment relationships may be terminated on economic grounds and whether courts are empowered to review the facts underlying a dismissal that is based on economic grounds invoked by the employer.

As regards termination on the grounds of age, the Committee notes that pursuant to Article 36 (14) of the Employment and Industrial

Relations Act, the employer can terminate an employment relationship in the event the employee has reached pension age as defined in the Social Security Act. The Committee notes from the said Act that the pension age is fixed at 65. The Committee understands that even though the said Act permits termination on the ground that an employee has reached pension age, termination is not compulsory but still subject to the discretion of the employer.

The Committee holds that dismissal on the grounds of age will not constitute a valid reason for termination of employment unless a termination is, within the context of national law, objectively and reasonably justified by a legitimate aim such as legitimate employment policy, labour market objectives or the operational requirements of the undertaking, establishment or service and provided that the means of achieving that aim are appropriate and necessary. It wishes the next report to provide information on whether and how the legal framework complies with this approach.

The Employment and Industrial Relations Act does not require that termination of employment is notified in writing but employers are under an obligation to provide the Employment and Training Corporation, Malta's public employment service, with a written termination form within four days following the dismissal stating the reasons for termination.

Prohibited dismissals

The Committee points out that a series of provisions in the Charter and Revised Charter require more rigorous safeguards against dismissal on certain grounds:

– Articles 1§2; 4 §3 and 20: discrimination;
– Article 5: trade union activity;
– Article 6§4: participation in a strike;
– Article 8§2: maternity;
– Article 15: disability;
– Article 27: family responsibilities;
– Article 28: workers' representation.

Most of these reasons are also listed in the Appendix under Article 24 as reasons which do not justify dismissal. However, the Committee will continue to check whether national situations are in conformity with the Revised Charter in regard to these reasons when

it examines the reports on each of these provisions. It thus restricts its examination of more rigorous protection against dismissal to the reasons listed in the Appendix under Article 24 which are not referred to elsewhere in the Revised Charter, namely:

– "the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities". The Committee considers that national legislation should contain an express safeguard, in law or case law, which protects employees against retaliatory dismissal if they turn to the courts or another competent authority to enforce their rights;
– "temporary absence from work due to illness or injury".

The Committee notes from Section 36 (14) of the Employment and Industrial Relations Act (see above) that a dismissal is unlawful in the event it is based on the ground that an employee has filed a complaint or is participating in proceedings against the employer involving alleged violation of laws or regulation or is having recourse to competent administrative authorities. The Committee finds the situation to be in conformity with the Revised Charter in this respect.

Furthermore, Section 36 (15) of the said Act stipulates that an employment contract may not be terminated by the employer without the consent of the employee during a period of twelve months due to incapacity of work of the employee caused by personal injury by accident arising out of and in the course of employment or by any of the occupational diseases specified in the Social Security Act. The Committee asks what are the applicable rules in the event of temporary absence from work due to illness or injury that has not occurred in the course of employment.

Remedies and sanctions

According to the report, workers who consider that they have been unfairly dismissed can appeal within four months from the date of the dismissal, to the Industrial Tribunal.

If the Industrial Tribunal considers that the employee has been unjustly dismissed, it may order reinstatement or, if this is not possible or the employee does not wish to be reinstated, it may award pecuniary compensation to the employee. The report further states that when determining the amount of such compensation, the Tribunal shall take into consideration the real damages and losses

incurred by the worker who was unjustly dismissed, as well as other circumstances such as the worker's age and skills as may affect the employment potential of the said worker. The Committee asks whether compensation in such cases is subject to a ceiling.

Finally, the Committee asks the next report to specify how the burden of proof is distributed between the parties to court proceedings regarding unfair dismissals. It holds that in such proceedings the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment between employee and employer.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 24 of the Revised Charter on the ground that employees are excluded from protection against dismissal during a six months probationary period that might be extended until up to one year for certain categories of employees.

Article 25 – Right of workers to the protection of their claims in the event of the insolvency of their employer

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

Article 25 of the Revised Charter guarantees employees' right to protection of their claims in the event of their employer's insolvency. States which have accepted this article have a margin of appreciation as to the form of protection, provided the protection is adequate and effective and also covers situations where the enterprise's assets are insufficient to meet the pay owed to employees or are simply insufficient to justify opening formal insolvency proceedings (Conclusions 2003, France). To demonstrate the adequacy of the protection in actual practice, states must indicate, in particular, the average time between submission of the claim and payment of the sums due, together with the overall proportion of employees' claims met (Conclusions 2003, Sweden). In addition, the claims covered must as a minimum include, together with pay, any amounts owed for paid leave and other paid absence in respect of a given period. States may restrict protection of claims to a specified amount (Conclusions 2005, Estonia) provided the amount is socially acceptable. Certain categories of employees may, exceptionally, be excluded from Article 25 protection because of the special nature of their employment relationship. However, it is for the Committee to determine on each occasion whether the nature of the employment relationship warrants such an exclusion. Under no circumstances may this be a reason for the exclusion of part-time employees and employees on fixed-term or other temporary contracts.

The Committee notes from the report that, under the legislation in force, an employer is deemed insolvent when a request has been made for bankruptcy proceedings against him under the relevant provisions of the Commercial Code and the court has:

a) either established that the employer's undertaking or business has been definitely closed down and that the available assets are insufficient to meet the employees' claims;
b) or appointed a provisional liquidator or administrator under the Companies Act.

The Committee further notes that, in the event of the employer's insolvency, the employees' claims are protected by a guarantee fund. This covers sums due in respect of unpaid wages, unpaid

overtime, arrears of any leave entitlement for the current and preceding year, and any notice money payable. As regards the amounts payable, the Committee notes that the maximum which the Guarantee Fund pays out cannot exceed 13 times the national weekly minimum wage (€125.89 in 2004[1]) applying at the time of termination of employment.

The Committee notes from another source[2] that, in Maltese law, unpaid wages up to the amount of 200 Maltese pounds (about €465) are treated as privileged claims and are settled before any other claims in the event of the employer's insolvency.

In the light of the foregoing the Committee firstly asks if employees' protection also applies to cases where an undertaking closes down without being able to meet its commitments but has not been formally declared insolvent or been the subject of formal insolvency proceedings. It requests confirmation that the above-mentioned privilege arrangement is still in force and, if appropriate, it requests that the next report explain whether the privilege and guarantee systems operate simultaneously or separately.

The Committee further wishes to know whether employees' claims in respect of sums due for paid absence other than paid holiday are covered by the guarantee system and what the protection period is for each type of claim protected.

It requests details of how the Guarantee Fund operates, an estimate of the overall proportion of employees' claims met by the Guarantee Fund, and the average length of time between submission of claims and payment of the sums due to employees.

The report states that domestic staff, share fishermen and wage earners who, on their own or with a close relative, owned all or part of the undertaking do not qualify for protection from the Guarantee Fund. The Committee requests an estimate of the number of workers not covered by the guarantee fund and whether there is any other form of effective protection for them.

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[1] Website of the European Foundation for the Improvement of Living and Working Conditions: http://www.eurofound.europa.eu

[2] Website of the ILO: www.ilo.org/public/french ; CONFREP-2002-12-0200-B-01-fr.doc

The Committee concludes that the situation in Malta is in conformity with Article 25 of the Revised Charter.

Chapter 16 – Conclusions concerning Articles 1, 9, 15, 18, 20 and 24 of the Revised Charter in respect of Moldova

Introduction

The function of the European Committee of Social Rights is to assess the conformity of national law and practice with the European Social Charter and the Revised Charter. In respect of national reports, it adopts "conclusions" and in respect of collective complaints, it adopts "decisions".

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

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

This report was the first under the new system for the submission of reports adopted by the Committee of Ministers.[2] It concerned the accepted provisions of the following articles belonging to the first thematic group "Employment, training and equal opportunities":

– the right to work (Article 1),
– the right to vocational guidance (Article 9),
– the right to vocational training (Article 10),
– the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15)

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

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

– the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
– the right of men and women to equal opportunities (Article 20),
– the right to protection in cases of termination of employment (Article 24),
– right of workers to the protection of claims in the event of insolvency of the employer (Article 25).

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

The applicable reference periods were:

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

The present chapter on Moldova concerns 11 situations and contains:

– 3 conclusions of conformity: Articles 1§3, 18§4 and 24;
– 5 conclusions of non-conformity: Articles 1§2, 1§4, 9, 15§1 and15§2.

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

The next Moldovan report concern the accepted provisions of the following article belonging to the second thematic group "Health, social security and social protection":

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

The deadline for the report was 31 October 2008.

Article 1 – Right to work

Paragraph 1 – Policy of full employment

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

Employment situation

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

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

As to unemployment, it continued to decline during the reference period, reaching 7.4% in 2006. The same applies to the number of unemployed women as a proportion of female labour force (45,7% in 2006) and the youth unemployment rate (for 15 to 24 year-olds), which was 17.1% in 2006. On the other hand, the number of the long-term unemployed as a proportion of all unemployed significantly increased (from 3.7% in 2004 to 13.3% in 2006).

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

Employment policy

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

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

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

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

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

Conclusion

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

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

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

1. Prohibition of discrimination in employment

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

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

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

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

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

According to the report, Act No. 102-XV of 13 March 2003 on the employment and social protection of jobseekers was amended by Act No. 100-XVI of 27 May 2005 to prohibit discrimination in job offers on grounds of nationality, ethnic origin, sex, age, political opinion or social background. The Committee asks what the

justification for this restricted list is and why discrimination on grounds of race, religion, disability and sexual orientation are not included.

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

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

The Committee points out that under Article 1§2 of the Revised Charter, any compensation awarded to a victim of discrimination must be effective and proportionate and act as a deterrent. It considers therefore that imposing a predetermined upper limit is not in conformity with the Revised Charter as in some cases this may mean that the compensation awarded is not commensurate with the loss or damage incurred and not sufficiently dissuasive for the employer (Conclusions 2006 Moldova, Albania). The Committee therefore asks again whether there is an upper limit on the compensation that can be awarded in cases of discrimination.

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

In previous conclusions, it has been noted that the labour inspectorate and unions are entitled to institute judicial proceedings in cases of alleged discrimination. The Committee asked nonetheless whether associations, organisations or other legal entities, which had, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring respect for equal treatment within the

meaning of Article 1§2 of the Revised Charter, had the right to obtain a ruling that the prohibition of discrimination had been violated and whether any other specific independent bodies had been established to promote equal treatment; it also asked for information on any measures taken to promote equality in employment. The report fails to provide any information in this respect so the Committee repeats its questions.

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

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

2. Prohibition of forced labour

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

Prison work

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

The Committee notes from the report that prisoners may be required to work for private companies but they must receive proper pay, in conformity with labour legislation and no lower than the minimum wage. The Committee wishes, nonetheless, to obtain more detailed information on prison work and so it repeats the questions it put in the General Introduction to Conclusions 2006 Moldova:

– Can a prisoner be required to work (irrespective of consent):

  A. for a private undertaking/enterprise
    i) within the prison?
    ii) outside the prison?
  B. for a public/state undertaking
    i) within the prison?
    ii) outside the prison?

– What types of work may a prisoner be obliged to perform?
– What are the conditions of employment and how are they determined?

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

Privacy at work

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

Service required to replace military service

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

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

Part-time work

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

Restrictions linked to the fight against terrorism

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

Conclusion

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

Paragraph 3 – Free placement services

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

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

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

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

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

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

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

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

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

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

Conclusion

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

Paragraph 4 – Vocational guidance, training and rehabilitation

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

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

As Moldova has accepted Articles 9 (right to vocational guidance) and 15§1 (right of persons with disabilities to vocational guidance, education and training) of the Revised Charter, the Committee refers to its findings under these articles. It found the situation not to be in conformity with the Charter under Article 9 on the ground that that it has not been established that equal treatment is guaranteed to all nationals of States Parties. Moreover, it found the situation not to be in conformity with the Charter under Article 15§1 on the ground that there is no legislation explicitly protecting persons with disabilities from discrimination in education and training.

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

10§3 of the Revised Charter. Moldova's report under Article 1§4 contains information relating to the continuing vocational training of unemployed people and workers.

The Committee notes from another source[1] that continuing training for workers may be provided by private or public adult education institutions which must be certified by the Ministry of Education. Funding for these institutions is provided by sponsors, donations and other sources. The Committee asks again what are the requirements for access to these courses and what kind of training is on offer.

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

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

According to the report, in 2005, 4,621 unemployed people attended vocational training courses and 3,170 of them subsequently found work. In 2006, 4,629 attended and 3,185 found work. One in every ten unemployed people attends training courses. The Committee notes from another source[2] that the adult education participation rate is very low and fails to satisfy the workforce's training needs. The Committee asks if the Government is planning measures to increase the participation rate of employed and unemployed persons in vocational training courses.

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

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

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

to-date information on the budget for continuing vocational training for employed and unemployed persons.

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

Conclusion

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

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

Article 9 – Right to vocational guidance

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

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

Vocational guidance in the education system

a. Functions, organisation and operation

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

b. Expenditure and numbers of staff and of persons assisted

In its previous conclusion (Conclusions 2005), the Committee asked for information about expenditure on, the numbers of staff involved in and the number of persons assisted by the school vocational guidance system. In view of the lack of information, the Committee repeats its question and asks for this information to be provided systematically in each report.

Vocational guidance in the labour market

a. Functions, organisation and operation

Vocational guidance in the labour market is provided by public and private employment agencies. The information in the report only concerns public services operated by the national employment agency and its local offices. In the absence of any answer in the

report, the Committee would like to know what proportion of the vocational guidance market is occupied by private employment agencies. If the latter are intensively involved in providing such guidance, the Committee would like the next report to contain information on their operational resources, the cost of their services.

b. Expenditure and numbers of staff and of persons assisted

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

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

Equal treatment of Nationals of the other States Parties

The Committee previously asked what legislation existed to ensure equal entitlement to vocational guidance for all members of society. In the absence of a reply, the Committee notes from another source[1] that articles 34§1 and 35§§1, 2 and 3 of the Moldovan Constitution and articles 43 and 47b of the Labour Code provide for equal opportunities and prohibit all forms of discrimination with regard to vocational guidance and training.

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

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

Conclusion

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

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

Paragraph 1– Education and training for persons with disabilities

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

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

Anti Discrimination legislation

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

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

request in its previous report. The Committee reiterates its requests for clarification.

Education

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

Vocational guidance and training

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

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

Conclusion

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

Paragraph 2– Employment of persons with disabilities

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

Non-discrimination legislation

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

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

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

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

Measures to promote employment

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

In this context, the Committee also recalls that “there must be obligations on the employer to take steps in accordance with the requirement of reasonable accommodation to ensure effective access to employment and to keep in employment persons with disabilities, including persons who have become disabled while in their employment as a result of an industrial accident or occupational

disease" (Conclusions XVIII-2, Statement of Interpretation on Article 15§2). The Committee requests the next report to indicate what steps employers may take in practice in this regard.

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

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

Conclusion

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

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

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

Paragraph 3 – Liberalising regulations

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

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

Access to the national labour market

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

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

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

periods may be eligible for a permanent work permit after a certain lapse of time.

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

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

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

Exercise of the right of employment/consequences of job loss

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

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

leave the host country, is such an infringement of individual freedom that it cannot be considered to reflect a spirit of liberality or flexible regulations (Conclusions II, statement of interpretation of Article 18).

Conclusion

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

Paragraph 4 – Right of nationals to leave the country

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

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

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

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

The Committee notes that the restrictions listed in sub-paragraphs (iii) to (vii) are the same as those referred to in section 12 of the Migration Act mentioned above. It considers that the other restrictions are *prima facie* among those authorised by Article G of the Revised Charter. However, the Committee asks for the next

report to describe the exact content and scope of these restrictions, particularly those referred to in sub-paragraphs (i) and (iv). It also asks if Moldovan citizens may be prevented from leaving the country for any other reasons than those mentioned above.

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

It points out again that intermediaries involved in the placement of citizens abroad must hold a special licence for the purpose issued by the state; the placement of Moldovan citizens abroad is based on individual employment contracts concluded between the citizen personally or via an intermediary and the foreign employer, which must be presented to the Immigration Service before the employee leaves the country. The Committee asks for confirmation that citizens are free to seek work abroad without the involvement of placement agencies.

Conclusion

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

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

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

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

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

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

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

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

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

Scope

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

Obligation to provide a valid reason for termination of employment

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

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

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

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

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

Prohibited dismissals

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

Remedies and sanctions

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

Conclusion

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

Chapter 17 – Conclusions concerning Articles 1, 9, 10, 15, 18, 20, 24 and 25 of the Revised Charter in respect of the Netherlands (Kingdom in Europe), the Netherlands Antilles and Aruba

Introduction

The function of the European Committee of Social Rights is to assess the conformity of national law and practice with the European Social Charter and the Revised Charter. In respect of national reports, it adopts "conclusions" and in respect of collective complaints, it adopts "decisions".

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

The present chapter on the Netherlands contains three subsections:

– The Netherlands (Kingdom in Europe)
– The Netherlands (Netherlands Antilles)
– The Netherlands (Aruba)

The Netherlands (Kingdom in Europe)

The Revised European Social Charter was ratified by the Netherlands with respect to the Netherlands (Kingdom in Europe) on 3 May 2006. The time limit for submitting the 1st report on the application of the Revised Charter to the Council of Europe was 31 October 2007 and the Netherlands submitted it on 18 January 2008.

This report was the first under the new system for the submission of reports adopted by the Committee of Ministers.[2] It concerned the accepted provisions of the following articles belonging to the first thematic group "Employment, training and equal opportunities":

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

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

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

The Netherlands has accepted all of these provisions with respect to the Netherlands (Kingdom in Europe).

The applicable reference period for these provisions was 1 January 2005 – 31 December 2006.

The subsection on the Netherlands (Kingdom in Europe) concerns 20 situations and contains:

– 12 conclusions of conformity: Articles 1§1, 1§2, 1§3, 9, 10§1, 10§2, 10§3, 18§1, 18§2, 18§4, 20 and 25;
– 1 conclusion of non-conformity: Article 18§3.

In respect of the 7 other situations concerning Articles 1§4, 10§4, 10§5, 15§1, 15§2, 15§3 and 24, the Committee needs further information. The Government is therefore invited to provide this information in the next report on the provisions in question.

The next report of the Netherlands (Kingdom in Europe) deals with the accepted provisions of the following articles belonging to the second thematic group “Health, social security and social protection”:

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

The deadline for the report was 31 October 2008.

The Netherlands (Netherlands Antilles)

The European Social Charter was ratified by the Netherlands with respect to the Netherlands Antilles on 22 April 1980. The time limit for submitting the 8th report on the application of the Charter to the Council of Europe was 31 October 2007 and the Netherlands submitted it on 25 June 2008.

This report was the first under the new system for the submission of reports adopted by the Committee of Ministers. It concerned Article 1 of the Charter and Article 1 of the Additional Protocol, articles which are binding on the Netherlands Antilles as concerns the first thematic group "Employment, training and equal opportunities" (see above).

The applicable reference periods were:

– 1 January 2003 – 31 December 2006 for Article 1 of the Additional Protocol;
– 1 January 2005 – 31 December 2006 for Articles 1§1, 1§2, 1§3 and 1§4.

The subsection on the Netherlands Antilles concerns 5 situations and contains:

– 5 conclusions of non-conformity: Articles 1§1, 1§2, 1§3, 1§4 and Article 1 of the Additional Protocol.

For practical reasons these conclusions, which relate to the 1961 Charter, are published in the volume on the Revised Charter together with the conclusions for the Netherlands (Kingdom in Europe).

The next report of the Netherlands with respect to the Netherlands Antilles will concern Article 5 (the right to organise) and Article 6 (the right to bargain collectively) of the Charter belonging to the third thematic group "Labour rights" (as none of the articles belonging to the second thematic group were so far accepted by the Netherlands with respect to the Netherlands Antilles).

The report should be submitted to the Council of Europe before 31 October 2009.

The Netherlands (Aruba)

The European Social Charter was ratified by the Netherlands with respect to Aruba on 22 April 1980. The time limit for submitting the 3rd report on the application of the Charter to the Council of Europe was 31 October 2007 (reference period: 1 January 2005 to 31 December 2006) and the Netherlands did not submit it.

This report should have been the first under the new system for the submission of reports adopted by the Committee of Ministers. It should have concerned the provisions of the above-mentioned articles belonging to the first thematic group "Employment, training and equal opportunities".

In the absence of the report concerning the implementation of these articles, the subsection on Aruba recalls the conclusions previously adopted by the Committee with regard to the above mentioned provisions and contains no new conclusions.

The next report of the Netherlands with respect to Aruba will concern Article 5 (the right to organise) and Article 6 (the right to bargain collectively) of the Charter belonging to the third thematic group "Labour rights" (as none of the articles belonging to the second thematic group were so far accepted by the Netherlands with respect to Aruba).

The report should be submitted to the Council of Europe before 31 October 2009.

The Netherlands (Kingdom in Europe)

Article 1 – Right to work

Paragraph 1 – Policy of full employment

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

Employment situation

The Committee notes from Eurostat that there was steady growth in the Netherlands during the reference period (3% in 2006, whereas it was 2.2% in 2004).

The employment rate rose during the reference period, remaining high (74.3% in 2006). This increase also concerned women (67.7% in 2006).

All the unemployment indicators declined during the reference period. The unemployment rate decreased appreciably, from 4.6% in 2004 to 3.9% in 2006 (the EU-15 average was 7.7% in 2006). Female unemployment fell slightly, from 4.8% in 2004 to 4.4% in 2006. The youth unemployment rate (ages 15-24) was 4.9% in 2006 (5.7% in 2004).

The Committee notes, however, that the number of long-term unemployed increased considerably as a proportion of the total number of unemployed, from 34.2% in 2004 to 43% in 2006, and is slightly higher than the EU-15 average (42,1% in 2006).

According to the report, there are considerable disparities in the unemployment situation of the various ethnic minorities. The unemployment rate notably among immigrants of non-European origin was 15.5% in 2006 (16.5% in 2005).

Employment policy

The new 2004 Work and Social Assistance Act is designed, among other things, to do this, in that it encourages benefit claimants to go back to work and provides for more targeted measures on their behalf. The report points out that a number of reintegration programmes have been taken over by the local authorities, which have been managing them direct since 2006 in place of the specialised agencies. These more targeted programmes provide, in

particular, for temporary subsidies for jobs, work placements, "work and learning" courses and refresher training. A total of 93 programmes was recorded in 2005. The local authorities also have considerable influence over local employers and, more generally, mediate between job-seekers and employers.

A number of measures are also being taken under the Work and Income Scheme by the Employment Insurance Agency (UWW): tax relief for the professions, lower social insurance contributions for employers who take on workers with disabilities, reintegration schemes, etc.

Other measures specifically concern the long-term unemployed, for example individual follow-up for six months to a year, depending whether they are young people or adults, and subsidies for temporary jobs.

With regard to ethnic minorities, the report mentions a number of initiatives on behalf of non-Western immigrants: the sharing of good practice at the instigation of the National Diversity Management Network (DIV)[1], placement measures, individual follow-up, job fairs enabling young people to meet different employers and steps to promote entrepreneurship. Other measures are more specifically designed to attract skilled foreign labour. The Committee previously (Conclusions XVIII-1) asked for information about the results of the Centres for Work and Income (CWIs) and the Employee Insurance Schemes (UWVs). As there has been no response, it reiterates its request.

The Committee would like the next report to specify the total number of persons benefiting from all these employment measures, the proportion of long-term unemployed and the activation rate.

Lastly, it notes that total expenditure on employment policy (active and passive measures) declined slightly during the reference period: it was 3.4% of GDP in 2005 (3.5 % in 2004). The proportion spent on active measures remained stable and was 0.9% of GDP in 2005. These figures are still higher than the EU-15 average (2% and 0.5% of GDP respectively in 2005).

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[1] A centre of expertise set up to promote diversity management.

Conclusion

The Committee concludes that the situation in the Netherlands is in conformity with Article 1§1 of the Revised Charter.

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

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

1. Prohibition of discrimination in employment

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

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

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

A description of the situation in the Netherlands appears in Conclusions XVIII-1.

The Committee notes that the Equal Treatment Act Evaluation Act came into force on 1 November 2005. This legislation extends the equal treatment commission's powers to allow it to institute investigations on its own initiative.

The Government has set up a national employment discrimination monitor to determine the nature and scale of employment discrimination on grounds of race, religion and nationality, and any trends over time. The first survey was launched on 15 December 2006. The aim is to publish a monitoring report on discrimination in all areas of employment every two years. The Committee asks for the main findings from these reports to be included in the next report.

It takes particular note of the "vacancies for all ages" project launched in 2005. In the project, employers or agencies that had advertised job vacancies with age limits were sent a letter and information on the equal treatment in employment (age discrimination) legislation and an age discrimination checklist was produced for employers to answer any questions they might have on this subject.

To illustrate the way the courts interpret discrimination based on age, the report describes a decision of the Arnhem district court (15 January 2007, LJN: AZ6237). This concerned a redundancy plan in which older employees would receive compensation until retirement age whereas younger ones would receive a lesser amount. The court ruled that the difference in treatment was not discriminatory and was legitimate because it took account of realities, in particular that older redundant workers found it harder to find fresh employment than their younger counterparts.

To show how indirect discrimination is interpreted, the report refers to a case in which an applicant for a job in telemarketing was rejected because of his foreign accent. The equal treatment commission considered that requiring employees to speak Dutch without a foreign accent was not direct discrimination on the grounds of race since the requirement did not relate directly to an individual's origins. Certain individuals of foreign origin spoke Dutch with no trace of an accent. On the other hand, the requirement to speak Dutch without a foreign accent would affect more people of non-Dutch than of Dutch origin, and therefore constituted indirect discrimination on grounds of race.

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

loss or damage incurred and not sufficiently dissuasive for the employer (Conclusions XVIII-1). The Committee notes from the report that there is no ceiling to the amount of compensation that may be awarded in cases of discrimination.

2. Prohibition of forced labour

Prison work

Convicted offenders aged under 65 are required to work, other than on public holidays or Sundays (or another day, depending on the prisoner's religion). Those who refuse to work are given a disciplinary punishment. Work inside prisons is generally carried out on behalf of private companies or organisations or, less frequently, a public body or the state. Prisoners may also work outside prison. The work undertaken is very varied, and includes production from concrete, wood, textiles and metal such as furniture making, as well as graphic products and spray painting. Prisoners' hours of work are set out in the prison regulations. In most closed facilities prisoners work half-days, i.e. an average of 20 hours a week. The 1998 Working Conditions Act is also applicable to prisons. The working conditions decree stipulates special rules for custodial institutions, such as prisoners' right to refuse work on the grounds of inadequate working conditions, i.e. a serious threat to safety. The remuneration of prisoners is regulated in the prisoners' pay regulations. It comprises a basic wage of € 0.64 an hour, plus any bonuses paid for performing special duties or for certain types of work. Prisoners in minimum security facilities are paid on the basis of the gross minimum wage for 23-year-olds, currently € 111.36 a week, from which a sum is deducted for board and lodging. Prisoners who work for private employers as part of a penal programme receive the full stipulated wage.

The Committee takes the view that the practice of employing prisoners for private enterprises, without the prisoners' consent and in conditions too far removed from those normally associated with a private employment relationship, is not consistent with the Charter prohibition on forced labour (Conclusions XVI-1, Germany). It therefore asks whether convicted prisoners can refuse to work for a private undertaking, whether inside or outside prison, and whether working conditions are similar to those in a free working relationship.

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

Privacy at work

Individuals must be protected from interference in their private or personal lives associated with or arising from their employment situation. Modern electronic communication and data collection techniques have increased the chances of such interference (see General Introduction to Conclusions 2006).

Article 13 of the Constitution protects the privacy of correspondence and the telephone and telegraph. There is no specific legislation on checks on the email correspondence of employees. Article 7:660 of the Civil Code does however allow employers to issue instructions on the performance of work and take measures to promote order in their companies. In principle this power gives employers the right to issue instructions concerning the use of email and the internet in their companies, though within the limits of the right to privacy and the confidentiality of employees' communications, even in the workplace. Employers may draw up a code of conduct on the use of email for personal correspondence. Employers who wish to check certain email practices of employees – for example, in the case of suspected abuse or fraud – require the assent of the works council. Such monitoring must meet the requirements of proportionality and subsidiarity, and the relevant employees must be informed. The duration and frequency of such checks must be limited, as must the number of individuals concerned. The data protection authority has published a report on employees' email correspondence. The Committee asks for an up-to-date description in the next report of the current state of the relevant legislation and case-law, to enable it to assess the situation with respect to Article 1§2 of the Revised Charter.

It also asks for information on aspects other than email to enable it to determine how far human freedom and dignity are protected by legislation and the courts against intrusions into personal or private life that may be associated with or result from the employment relationship (see observations on Article 1§2, General Introduction to Conclusions 2006, §§ 13-21).

Restrictions linked to the fight against terrorism

The Committee notes that current terrorism-related legislation in the Netherlands does not place any restrictions on individuals' right to occupy certain posts. However, legislation on the subject is currently being drafted. The Committee asks for information in the next report on the measures that are introduced and the categories of individual and jobs concerned.

Conclusion

Pending receipt of the information requested the Committee concludes that the situation in the Netherlands is in conformity with Article 1§2 of the Revised Charter.

Paragraph 3 – Free Placement Services

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

According to the report, the number of vacancies recorded by the Work and Income Centres (CWIs), which are mainly responsible for placing unemployed people, increased during the reference period, from 292,000 in 2005 to 305,000 in 2006. The placement rate likewise increased, from 31% in 2005 to 34% in 2006. The Committee asks that figures concerning the rate of placement under the Employees' Insurance Schemes (UWVs) and by the local authorities be included in the next report.

The Committee asks that additional indicators such as the number of people called for interview by the public employment services, the number of people put into contact with an employer and the average time taken to fill vacancies be included in the next report. It also requests up-to-date information about the total number of staff of the public employment services and the number of CWIs and private employment agencies.

Conclusion

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

Paragraph 4 – Vocational guidance, training and rehabilitation

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

As the Netherlands has accepted Article 9, 10§3 and 15§1 of the Revised Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to guidance and vocational training for persons with disabilities are dealt with under these provisions.

In these conclusions, the Committee found that the situation with regard to the vocational guidance and vocational training of workers (Articles 9 and 10§3) is in conformity with the Revised Charter.

However, it deferred its conclusion on education and training for persons with disabilities (Article 15§1) because of lack of information.

Conclusion

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

Article 9 – Right to vocational guidance

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

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

Vocational guidance within the education system

a. Functions, organisation and operation

According to the report, in 2006, the youth unemployment task force, working in collaboration with the Ministry of Education, Culture and Science and other stakeholders, launched a project intended to promote vocational guidance in secondary schools. The national campaign entitled "*Kom in het leerbedrijf*" offers young people an opportunity to spend a day in a certified training company to familiarise them with various occupations. The Committee asks again whether this activity takes place every year.

Another campaign run by the task force is called "Everyone should have the choice" (*Kiezen moet je kunnen*) and is based on multimedia communication. It is aimed at pupils, teachers, counsellors and parents and was publicised through a brochure setting out six practical examples of vocational guidance. A survey on the campaign has revealed that 96% of participants (guidance counsellors and head teachers) regard this as a good way of drawing attention to the issue of guidance.

b. Expenditure, staffing and number of beneficiaries

The report provides no information at all on spending on guidance services in the education system, staffing numbers or total beneficiaries of guidance. It asks for this information to appear systematically in each report.

Vocational guidance in the labour market

a. Functions, organisation and operation

In its previous conclusion (Conclusions XVIII-2), the Committee noted that the youth unemployment task force was working in co-

operation with the work and income centres (WICs) on a learning package for students and careers advisers. WIC careers advisers are required to present their activities in secondary schools. In the absence of any reply, the Committee asks for information on the follow-up to this programme.

The Committee also noted that the WICs were working on a project to open skills testing centres intended to help everyone find an appropriate job more readily. The Committee also asks for information on the follow-up to this project.

b. Expenditure, staffing and number of beneficiaries

According to the report, the annual grant allocated to regional training centres and specialist colleges for career planning and guidance is € 11.8 million. This grant has increased by € 2.5 million every year since 2005. However, no detailed breakdown of spending is available.

As to staffing, the report states that there are 31,662 full-time teaching posts in the adult and vocational education sector. There is no information in the report, however, about the total number of beneficiaries of vocational guidance in the labour market.

The Committee emphasises how important it is for it to have relevant information to be able to assess the situation and asks for up-to-date information in the next report on spending on vocational guidance in the labour market, numbers of staff and total numbers of beneficiaries. It asks for this information to appear systematically in each report.

Dissemination of information

According to the report, two Internet sites[1] contain information on vocational training and guidance. These sites can be consulted free of charge and are regularly updated. In addition, various conferences on career planning and guidance were held in 2006 with the aim of exchanging relevant professional experience.

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[1] www.opleidingenberorp.nl and www.studiekeuze.nl

Equal treatment of nationals of the other States Parties

The Committee notes that there has been no change in the situation which it previously considered (Conclusions XVIII-2) to be in conformity.

Conclusion

The Committee concludes that the situation in Netherlands is in conformity with Article 9 of the Revised Charter.

Article 10 – Right to vocational training

Paragraph 1 – Promotion of technical and vocational training and the granting of facilities for access to higher technical and university education

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

Secondary and higher education

The Committee has already looked into the organisation of the secondary and higher education system and considered it to be in conformity with the Charter (Conclusions XVI-2 and XVIII-2).

Measures to facilitate access to education and their effectiveness

According to the report in 2006 the total spending on vocational training amounted to € 3,126.1 million of which € 2,751.3 million was spent on secondary vocational education (MBO) and € 248.5 million on adult education. There were 322,600 students in full time vocational training.

The Committee notes from Eurostat that in 2004 the Netherlands allocated 5,16% of its GDP to education at all levels.

Conclusion

The Committee concludes that the situation in the Netherlands is in conformity with Article 10§1 of the Revised Charter.

Paragraph 2 – Apprenticeship

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

The Committee has already looked into the organisation and functioning of apprenticeship and considered it to be in conformity with the Charter (Conclusions XVI-2 and XVIII-2). In notes further from the report that businesses receive funding through various channels for giving work placement opportunities to people in initial education. They receive direct funding under the Salaries Tax and Social Insurance Contribution Act in the form of an allowance when

they offer work placements to students in secondary vocational education (MBO). As an indirect funding they receive funds to cover costs of centres of expertise on vocational education, training and the labour market and also, funds to cover the costs of further training of trainee supervisors in the companies concerned.

The Committee reiterates its question whether there are enough apprenticeship places to satisfy the demand.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Netherlands is in conformity with Article 10§2 of the Revised Charter.

Paragraph 3 – Vocational training and training of adult workers

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

Employed persons

The Committee has already looked into the organisation and functioning of continuing training for employed persons (Conclusions XVIII-2) and found that the situation was in conformity with the Charter.

The Committee takes note of the Learning and Working Project Department which aims to give a boost to vocational training for workers and jobseekers. It notes that in the framework of its dual courses combining learning and work experience in 2006 arrangements have been made for a total of 23,117 dual courses. The Learning and Working Project Department targets its activities towards providing better information about existing instruments for promoting lifelong learning.

Unemployed people

The Committee notes from Eurostat that the unemployment rate amounted to 4,7% in 2005 and 3,9% in 2006.

In its previous conclusion the Committee noted that further training and reintegration services had been liberalised since the introduction of the Work and Income Act in 2002. The Committee wishes to be kept informed about the implementation of this Act as concerns continuing training. The report states that the rate of participation in education and training by people aged 25-64 is 16.6% which is well above the European average.

Conclusion

The Committee concludes that the situation in the Netherlands is in conformity with Article 10§3 of the Revised Charter.

Paragraph 4 – Long-term unemployed persons

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

The Committee notes from Eurostat that the long-term unemployment rate in 2005 amounted to 40,2% of total unemployment and increased to 43,0% in 2006.

The Committee notes from the report that under Section 72 of the Unemployment Insurance Act, the Employee Insurance Agency has the task of facilitating the return to work of workers who are entitled to unemployment benefit or those who can prove that their employment will terminate within four months. Persons who are registered as unemployed can also determine their own reintegration programme on the basis of an individual reintegration agreement. Workers who are entitled to unemployment benefit are also entitled to support in returning to work.

The Committee recalls that, in accordance with Article 10§4 of the Revised Charter, States Parties must fight long-term unemployment through retraining and reintegration measures. A person who has been without work for 12 months or more is long-term unemployed. The main indicators of conformity with this provision are the types of training and retraining measures available on the labour market for long-term unemployed persons and the impact of the measures on reducing long-term unemployment. Since the report does not provide information specifically on long-term unemployed persons, the Committee requests that the next report provide the number of long-term unemployed persons who participated in training

measures, types of such measures and their impact on reducing long-term unemployment.

Conclusion

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

Paragraph 5 – Facilities

The Committee takes note of the information in the Netherlands' report.

Fees and financial assistance (Article 10§5 a and b)

The Committee notes the updated information provided in the report concerning tuition fees. It observes that since August 2005 students in secondary vocational education (MBO) who are under the age of 18 have not been required to pay fees. However, students aged 18 or over pay school fees. Students in full-time higher education also pay tuition fees which are index-linked annually.

As regards financial assistance, the Committee notes that there are new policies that have been introduced in higher education in 2007. The Committee will take these into account in its next assessment of the situation under this paragraph.

In its previous conclusion (Conclusions XVIII-2) the Committee held that all nationals of other States Parties enjoyed equality of treatment as regards entitlement for student finance. However, it notes from the report that there have been developments in the entitlement of foreign nationals to financial assistance. Namely, since 15 March 2005 only those EU nationals who have lived in the Netherlands for five years or more are entitled to full student finance. EU students who are not yet eligible for full student finance are entitled to an allowance towards their tuition fees. The Committee asks how this change affects non-EU students and the situation which was previously (Conclusions XVIII-2) found to be in conformity with the Charter both for EU and non-EU students legally resident or regularly working in the Netherlands.

Training during working hours (Article 10§5 c)

The Committee notes that there has been no change to the situation which is previously considered to be in conformity with the Revised Charter.

Efficiency of training (Article 10§5 d)

The Committee notes that the quality of practical training in the workplace is monitored by the Education Inspectorate. It also observes that the Netherlands Court of Audit is conducting an audit to examine the efficiency of vocational training. The Committee wishes to be kept informed about the results of this audit.

Conclusion

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

Article 15 – Right of persons with disabilities to independence, social integration and participations

Paragraph 1 — Education and training for persons with disabilities

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

Definition of disability

The Committee notes from the report that in order to establish whether pupils with disabilities are eligible for special education or additional support in mainstream primary and secondary schools, their degree of disability and special needs must be determined by one of the independent committees based at the regional expertise centres. The nationally established assessment criteria are laid down in the Personal Budget (Education) Decree (*Besluit leerlingengebonden financiering*). The Committee asks whether these criteria are based on a more social definition such as that endorsed by the WHO in its International Classification of Functioning, Disability and Health – ICF 2001.

The Committee reiterates its request to be systematically provided with figures concerning the total number of persons with disabilities, including the number of persons with disabilities below 18 years of age and of working age.

Anti-discrimination legislation

In its previous conclusion (Conclusions XVIII-2), the Committee had highlighted that under Article 15§1, it considers necessary the existence of non-discrimination legislation as an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes. Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education. Legislation may consist of general anti-discrimination legislation, specific legislation concerning education, or a combination of the two. The Committee had asked whether any such legislation existed in the Netherlands.

Since the current report does not clarify whether the scope of either the 2003 Equal Treatment (Disabled and Chronically Ill People) Act or the 2003 Disability Act has been expanded to also cover education, the Committee reiterates its request.

Education

The Committee takes note of the figures provided in the report with regard to the number of full time jobs, including teaching posts, in primary and secondary mainstream and special education.

In its previous report (19th Report on the Social Charter), the Government informed the Committee that children with disabilities attended mainstream schools to the extent possible. In the report, it is highlighted that the total number of students in primary mainstream education is 1,500,000 and this includes 18,000 students with disabilities. It is also stated that the total number of students in secondary mainstream education is 911,000 and this includes 9,000 students with disabilities. It is further indicated that 63,000 students with special needs are in special primary and secondary schools. Since the total number of persons with disabilities in school age (primary and secondary) is not provided, it is not possible to establish whether progress has been made to increase the number of students in mainstream education. The Committee requests the next report to provide the relevant figures.

In its previous conclusion, the Committee noted from another source[1] that, at least with respect to children with intellectual disabilities, mainstreaming though possible remained a rather difficult option, particularly due to lack of adequate services. According to the same source, a number of children consequently appeared to be excluded from education and children with autism seemed to be the largest group not attending school.

Commenting on these remarks, the report highlights that an evaluation of the special needs system in primary and secondary schools (2005) confirmed the existence of a number of problems as regards access to mainstream education for children with disabilities:

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[1] EUMAP (EU Monitoring and Advocacy Programme of the Open Society), *Right of People with intellectual disabilities: access to education and employment,* Summary Report The Netherlands, 2005.

parents often approach several mainstream schools before their child is allocated a place.

The report informs that to improve this situation, a programme was launched in 2005 aimed at ensuring that children receive an appropriate education corresponding to their needs. An important element of this programme is the introduction of the principle of a "duty of care" according to which the school where a special needs pupil applies is required to find an appropriate place in the education system for that pupil. Cooperation and coordination between the various educational establishments has to be ensured to avoid the exclusion from education of any pupil. The report points out that following an experimental phase, relevant statutory amendments should be introduced by 1 August 2011.

The Committee asks the next report to inform it about the concrete results of this programme, focusing in particular on:

- attendance (number of students with intellectual disabilities) in mainstreaming or special compulsory and upper secondary schooling;
- whether the educational offer in both mainstreaming and special education matches with the demand;
- any relevant case law or complaint brought to the appropriate institutions concerning discrimination in access to education.

In its previous conclusion, the Committee had further asked the next report to indicate what measures have been taken to include courses in special needs education in the general teacher training curriculum.

The report recalls that in accordance with the Education Professions Act (*Wet op de beroepen in het onderwijs, BIO*) a teacher must fulfil certain minimum quality requirements, known as standards of competence. Depending on circumstances (e.g. regional situation or type of education), these minimum requirements may need to be supplemented with other skills. The Committee asks whether such skills include special needs education.

Vocational training

In its previous conclusion, the Committee noted that mainstreaming applied to secondary vocational education (MBO) and higher university and non-university education as there are no special

education institutions for these levels of education. From the current report, the Committee further notes that adult and vocational educational institutions are entitled to special funding in the form of a personal budget for each disabled learner assessed as having special needs. The Committee asks the next report to highlight how many institutions used of this special funding to assist adults attending such institutions.

The Committee notes that in reply to its request as to the number of persons with disabilities attending secondary vocational and higher education, the report indicates that as of 31 December 2006, the total number of pupils in secondary vocational education (MBO) applying for a personal budget was 1,658. The Committee asks for clarifications on the categories in which this figure is subdivided. It also requests the next report to indicate the total number of persons attending secondary vocational and higher education.

In reply to the Committee, the report also informs that there are 61 institutions providing general secondary vocational education: 44 regional training centres, 13 specialist colleges and four institutes of higher professional education that offer part-time MBO courses. In addition, there are two MBO institutions for deaf people and 12 agricultural training centres that offer secondary vocational education courses in agricultural subjects. The Committee reiterates its previous question as regards the impact of training on the subsequent integration of persons with disabilities in the labour market.

Furthermore, the Committee notes that according to the Council for Work and Income survey of 2006, there are about 870 private reintegration agencies; More than two-thirds of the reintegration agencies offer their services regionally, the rest operate nationally.

Finally, the report points out that since the introduction of the Work and Income (Capacity for Work) Act (*Wet werk en inkomen naar arbeidsvermogen, WIA*) in 2006, it has been standard practice to look at what someone can do despite illness or disability, rather than what he/she cannot do. Two national campaigns were launched in 2006 to help partially disabled people find employment: an information campaign about the new Act and a publicity campaign designed to create a more positive image of the target group. The latter is a joint initiative of the Government, trade unions and employers' associations. The Committee requests the next report to

inform it about the impact in practice of the WIA, including data concerning integration of persons with disabilities in the labour market following the conclusion of the above mentioned reintegration agreements.

Conclusion

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

Paragraph 2 – Employment of persons with disabilities

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

The Committee observes that, although requested in its previous conclusions (Conclusions XVI-2 and XVIII-2), up-to date figures concerning the number of persons with disabilities of working age, those in employment and those unemployed are lacking since 1999.

The Committee underlines that should the next report not provide the requested information, nothing will demonstrate that the situation is in conformity with Article 15§2.

Non-discrimination legislation

The Committee refers to its previous conclusion (Conclusions XVIII-2), for a description of the Equal Treatment (Disabled and Chronically Ill People) Act, which entered into force in 2003, and which it considered in conformity with Article 15§2.

However, to assess whether the right to non-discrimination in employment is effectively guaranteed for persons with disabilities in practice, the Committee had asked (Conclusions XVIII-2) the next report to indicate:

– How the reasonable accommodation obligation is implemented in practice.
– If the reasonable accommodation obligation gave rise to cases before courts.
– If the reasonable accommodation obligation prompted an increase in employment of persons with disabilities in the open labour market.

Since no information has been provided in this regard, the Committee reiterates its requests.

Measures to promote employment

The Committee refers to its previous conclusions (Conclusions XVI-2 and XVIII-2) for a description of the various measures in place to promote employment of persons with disabilities in the ordinary labour market as well as through sheltered employment in accordance with the 1998 Sheltered Employment Act. It also refers to its conclusion under Article 15§1 as far as the measures to promote reintegration are concerned.

In its previous conclusion, to assess the effectiveness of the measures in place to promote employment, the Committee had asked the next report to indicate:

– the number or percentage of all persons with disabilities employed in the open labour market;
– the number of beneficiaries of the system of supported employment, as well as the rate of progress of such persons into the open market.

Since such information continues to lack, the Committee reiterates its requests. Again, the Committee points out, that should the next report not provide the requested information, nothing will demonstrate that the situation is in conformity with Article 15§2.

Conclusion

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

Paragraph 3 – Integration and participation of persons with disabilities in the life of the community

The Committee takes note of the information in the Netherlands' report.

Anti-discrimination legislation and integrated approach

The Committee recalls that the right of persons with disabilities to social integration provided for by Article 15§3 implies that barriers to

communication and mobility be removed in order to enable access to transport (land, rail sea and air), housing (public, social and private), cultural activities and leisure (social and sporting activities). For this purpose Article 15§3 requires:

– the existence of comprehensive non-discrimination legislation covering both the public and private sphere in fields such as housing, transport, telecommunications and cultural and leisure activities and effective remedies for those who have been unlawfully treated;
– the adoption of a coherent policy on disabilities, positive action measures to achieve the goals of social integration and full participation of persons with disabilities. Such measures should have a clear legal basis and be coordinated.

The Committee notes that the 2003 Equal Treatment (Disabled and Chronically Ill People) Act and the 2003 Disability Act prohibit discrimination on the ground of disability. It notes from another source[1] that the 2003 Equal Treatment Act covers access to the buildings and infrastructure associated with the public transport. The Committee asks for the next report to provide more details on the relevant legislation and case-law covering questions such as housing, transport, telecommunications and cultural and recreational activities for persons with disabilities. Similarly, it asks whether integrated programming is applied by all authorities involved in the implementation of the policy for persons with disabilities.

Consultation

The Government gives financial support to organisations and pressure groups which protect persons with disabilities. These groups are consulted relatively regularly, and local authorities must allow them to have their say on subjects such as the participation and integration of people with disabilities. The Committee wishes the next report to provide information on how these organisations are consulted in the design, review and implementation of measures for persons with disabilities. The Committee also wishes for the next report to provide more information on the obligation on local

[1] http://www.dredf.org/international/netherlands.html

authorities to consult with organisations which protect persons with disabilities.

Forms of economic assistance empowering persons with disabilities

The Committee asks for the next report to provide details on all benefits and other forms of financial assistance available to persons with disabilities.

Measures to overcome barriers

Technical aids

Under the Social Support Act (*Wet maatschappelijke ondersteuning, WMO*), people who need assistance in their daily lives are entitled to support from their local authorities in the form of home help, a wheelchair or adaptations to their home helping them to retain a degree of independence. The Committee refers to its statement of interpretation on Article 15§3 in the General Introduction to these conclusions. It asks whether persons with disabilities have a right to ask for other technical aids (such as orthopaedic prostheses, hearing and other aids) and if these are provided free of charge or they must cover a part of their cost.

Communication

With regard to the measures taken to promote access to the media and the new information technologies, the report states that new Government websites must meet certain requirements, ensuring that they are accessible to visually impaired people. For the benefit of the hearing impaired, television broadcasting companies must subtitle some of their Dutch-language television programmes.

The Committee asks if measures have been taken to promote access to the new telecommunication technologies. It also asks what the legal status of sign language is.

Mobility and transport

According to the report, new measures have been taken to facilitate access to rail transport (such as tactile guide strips for the blind, anti-slip floors and specially adapted ticket machines). Assistants are available free of charge to help passengers who are unable to travel independently. Between now and 2010, the Equal Treatment Act is

to be progressively extended to all regional and urban public transport systems to make them accessible to all persons with disabilities.

The Committee asks what has been done to ensure that this Act is implemented in practice and how access to public road, air and sea transport is guaranteed.

It also asks for information on whether free or reduced fares are available for persons with disabilities, where necessary to cover additional costs.

Housing

Since 2003, all new buildings have had to be accessible to persons with disabilities straight away to preclude the need for subsequent conversion work. If specific work is necessary, local authorities can provide financial assistance. The Committee asks for the next report to provide information on grants available for individual persons with disabilities for housing renovation, lift construction and removal of obstacles to movement, as well as on the number of beneficiaries and the results achieved in promoting accessible housing.

Cultural and leisure activities

Under the Social Support Act, local authorities must take responsibility for helping people with disabilities to take part in cultural and leisure activities. The Committee asks what is done to promote accessibility of sport and cultural activities (access, fees, special programmes, etc).

Conclusion

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

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

Paragraph 1 – Applying existing regulations in a spirit of liberality

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

Foreign population and migratory movements

The Committee notes that according to another source[1], there has been an overall decline in immigration to the Netherlands since 2001. The number of foreigners entering the country decreased by over 30% between 2001 and 2004. According to the OECD the main reason for this decline is the tightening up of age and income restrictions on family-related immigration and the introduction of language and culture tests. The Aliens Act of 2000, which resulted in substantial changes to asylum policy, also seems to have reduced partially immigration, although the number of foreign workers from the States which joined the European Union in 2004 and 2006 has increased considerably.

Work permits

Apart from nationals of parties to the Agreement on the European Economic Area, foreign nationals wishing to earn a living in the Netherlands usually require a work permit. The Committee notes from the report that, apart from Cypriots and Maltese, nationals of countries that joined the EU in 2004 were subject to these regulations for a three-year transitional period. In May 2007 (thus outside the reference period), all restrictions on the free movement of workers from these countries were removed. Nationals of Bulgaria and Romania, which have been EU members since 1 January 2006, were required to obtain a work permit for an initial two-year transitional period.

The Committee points out that foreign nationals who wish to be self-employed are granted a special residence permit for the purpose.

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[1] International Migration Outlook, OECD, Sopemi, 2006 edition.

The Committee asks for confirmation that there have been no changes to the rules on the subject.

Relevant statistics

The report provides statistics on the number of work permits granted and refused between 2003 and 2006, broken down by nationality. The Committee notes from these that, overall, the percentage of refusals decreased during the reference period. It was 15% in 2003, 13% in 2004, 12% in 2005 and, finally, 7% in 2006, which was its lowest point.

The Committee would emphasise that these figures reflect the number of refusals as a proportion of all foreign nationals required to obtain a work permit, of which nationals of States Parties are only a sub-set. It notes however, that the latter group, particularly the nationals of the new EU-members, have benefited most from the decreasing number of refusals. The statistics provided in the report show that the number of work permits granted to these people increased from 14,009 to 61,133 during the reference period (while the refusal rate decreased from 7 to 2.7%) meaning that over three quarters of the permits granted in 2006 went to nationals of these countries. A large portion of the increase is accounted for by Polish workers. Conversely, there was a decrease in the number of permits granted to nationals of non-EU States Parties (Albania, Armenia, Azerbaijan, Croatia, Georgia, Turkey, Ukraine, "the former Yugoslav Republic of Macedonia"), as well as in the percentage of rejected applications, apart from Turkish nationals, for whom the proportion of rejections increased from 25 to 29% during the reference period. The Committee asks what are the reasons for this increase.

The Committee points out that its assessment of the degree of liberalism in applying existing regulations is based on figures showing the refusal rates for work permits for first-time as well as for renewal applications by nationals of States Parties (Conclusions XVII-2, Spain). Although the figures relating to applications for renewal are not available, given the low overall rate of refusal, the Committee concludes that the situation is in conformity with Article 18§1 of the Revised Charter. However, it does ask for the next report to provide figures relating to applications for renewal, as well as up-to-date statistics on first-time applications for work permits and for residence permits by persons wishing to be self-employed.

Conclusion

The Committee concludes that the situation in the Netherlands is in conformity with Article 18§1 of the Revised Charter.

Paragraph 2 – Simplifying formalities and reducing dues and taxes

The Committee takes note of the information in the Netherlands' report.

Administrative formalities

Issue of work permits

The Committee notes that there were no changes during the reference period in the formalities to be met prior to the issue of work permits. In this connection, it points out that work permits are issued to employers, who are required to inform the Centre for Work and Income (CWI) of their intention five weeks before filing their application. The centre checks first whether there are any priority workers who could fill the vacancy instead (such as Dutch citizens or nationals of the European Economic Area) and whether the company has made enough efforts to try to recruit such workers. For a detailed description of these formalities, the Committee refers to its previous conclusions. It asks for the next report to provide further information on the formalities for obtaining work permits, particularly the documents required.

The Committee points out that residence permits for self-employed activities are issued on the condition that the planned activity will be of benefit to the country. In reply to the Committee's question, the report states that it is for the Ministry of Justice to decide whether this is so. For the purpose, it consults the Ministry of Economic Affairs, which presents it with an opinion based on a points system determining whether the proposed activity is advantageous for the Dutch economy. Points are attributed according to criteria relating to the applicant (qualifications, level of education, etc.), the planned activity (what it will involve) and the added value of the activity for the Dutch economy (e.g. the number of jobs it will create). According to the report, the system is not operational yet, but will be in the near future.

The Committee asks the next report to be informed about the setting-up of this points system and to provide further information on the formalities for obtaining a residence permit to engage in a self-employed activity. It asks in particular whether the application for such a permit can be made from the foreign worker's country of origin.

Work and residence permit

The procedures for applying for a work permit and a residence permit are interlinked. Obtaining a work permit is a prerequisite to obtaining a temporary residence permit, which is valid for as long as the holder is working legally in the Netherlands. In this connection, the report states that the Government is planning to simplify these formalities, doing away with the two-stage process whereby employers must obtain a work permit, then their employees must apply for a residence permit. The Committee asks for the next report to provide information on the progress made on these changes. It also asks what formalities need to be met to be issued a residence permit on the basis of a work permit.

Renewal of residence permits

In its previous conclusions, the Committee noted that the work permit renewal procedure had been simplified and that the Government had stated that it would provide information on this change in the next report. In the absence of any other information, the Committee asks for the next report to provide information on the requirements for the renewal of residence permits.

Waiting times

Applications for work permits are supposed to be processed within five weeks of the date on which they are filed. In reply to the Committee's question, the report states that these five weeks are added to the five-week period that must elapse between the employer's notification of intention and the filing of the application with the CWI mentioned above and that this means that there is potentially a ten-week total waiting time between the initial notification and the issue of the permit. In practice, however, the time required to process applications is about five weeks. According to the statistics provided, the proportion of applications processed within this time was 91.9% in 2006, 87.9% in 2005, 82.7% in 2004 and 77.1% in 2003. The Committee does not consider these times to

be excessive. It asks for the next report to provide information on the time required to process applications for residence permits by persons wishing to engage in a self-employed activity.

Chancery dues and other charges

As stated in previous reports, no chancery dues or other charges are payable for the issue of a work permit.

Conclusion

The Committee concludes that the situation in the Netherlands is in conformity with Article 18§2 of the Revised Charter.

Paragraph 3 – Liberalising regulations

The Committee takes note of the information in the Netherlands' report.

Access to the national labour market

The Committee recalls that workers from States which are not members of the European Economic Area must obtain a work permit, and that this can be issued to them only if there are no priority workers who could fill the vacancy. Companies wishing to employ a foreign national must also demonstrate that they have made sufficient efforts to recruit priority workers. On this point the Committee refers to its conclusion under Article 18§2.

The Committee notes that according to the report, a new system has been set up for highly skilled immigrants. The highly skilled category covers scientific researchers at university and persons earning over € 46 541 per year, or € 34 130 if they are under 30. They do not need a work permit and after five years they are entitled to a permanent residence permit.

The Committee notes that labour market access has been simplified for certain groups of foreign workers. Some categories of musician residing in the Netherlands for long periods can obtain a work permit irrespective of whether there are any priority workers or a job vacancy notice has been published. Work permits are no longer required for artists who perform only occasionally (for no more than

four weeks in a 13-week period), for victims or witnesses of trafficking in human beings required to stay in the Netherlands for the duration of the trial on their case, or for students.

According to the report, access to the labour market has also been simplified for non-EU nationals who have resided legally for at least five years in an EU member state and then for at least one year in the Netherlands. The Committee asks in what way it has been simplified.

The Committee notes that according to another source[1] measures have also been taken to stimulate the recruitment of low-skilled workers to certain categories of employment. Until 2006, nationals of the ten new EU member states were not regarded as priority labour. However, in view of the persistent labour shortages in a number of occupations, the Dutch Government decided, in early 2004, to introduce measures designed to encourage labour immigration in selected areas. Since then, the Centre for Work and Income (CWI) has published a list, updated every three months, of occupations in which it is considered that there are severe labour shortages. As a result the nationals of the new EU member states can be recruited to these jobs without the need for any prior search on the national labour market, and may take advantage of simplified administrative procedures.

In its previous conclusions (Conclusions XVII-2), the Committee found that the situation was not in conformity with Article 18§3 of the Charter owing to the nature of the restrictions on which refusals to grant work permits were based. There is no indication in the report that there has been any change to these grounds for refusals. In that connection, the Committee considers the rule according to which work permits can be refused on the ground that the applicant is older than 45 years to be particularly restrictive.

The Committee notes that according to the report, access to the national labour market has been improved for several categories of foreign nationals. However, in the absence of any change in the grounds for refusing work permits, it must repeat its conclusion of non conformity.

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[1] International Migration Outlook, OECD, Sopemi, 2006 edition.

Exercise of the right to employment

According to the report, highly skilled foreign nationals may work for any employer provided that the employer is registered with the immigration and naturalisation service. Apart from this, there is no indication in the report that there have been any changes to the rules on exercising the right to employment. In this connection, the Committee recalls that work permits are valid for the duration of the work in respect of which they were issued, but they may not be issued for more than three years. After three years of work carried out on the basis of a work permit, the foreign national concerned may be recruited for any job, for an unlimited period and in any branch of activity.

Consequences of loss of job

Foreigners who are dismissed while their work permit issued is still valid can register at a Centre for Work and Income (CWI) and make use of the mediation and training services offered there. The Committee asks whether, in such cases, foreign workers may apply for an extension of their residence permit to give them time to look for a new job.

Conclusion

The Committee concludes that the situation in the Netherlands is not in conformity with Article 18§3 of the Revised Charter on the ground that the regulations governing access to the national labour market for foreign nationals are too restrictive.

Paragraph 4 – Right of nationals to leave the country

The Committee notes from the Netherlands' report that the situation which it previously (Conclusions XVII-2) found to be in conformity with the Charter has not changed.

The Committee points out that Article 2 of the Netherlands Constitution establishes, among other things, the right to leave the country and prohibits any restrictions on that right which are not based on a statute. It is mainly the Passport Act, which came into force on 1 January 1992, that lays down cases in which restrictions may be placed on the right to leave the country. Under two other

pieces of legislation of 23 April 1971, the right of certain categories of person to leave the country in a state of emergency is subject to ministerial permission. The Committee previously held that all the restriction cases fell within the limits provided by Article G of the Revised Charter (Article 31 of the Charter).

Conclusion

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

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

The Committee takes note of the information in the Netherlands' report.

Equal rights

The Committee has examined the legislative framework for the right to equal treatment at work in previous conclusions, and therefore refers to these for an overview of the laws in this field (Conclusions XVI-1 and XVII-2, Article 1 of the Additional Protocol).

The report refers to changes in legislation which have taken place during the reference period. In October 2006, an amendment to the Equal Treatment Act was introduced in implementation of Directive 2002/73/EC[1], which extended the protection to employees in cases of harassment on the grounds of sex. As regards the powers of the Equal Treatment Commission, these were enlarged to enable this body to institute investigations on its own account, by the Equal Treatment Evaluations Act (which entered into force on 1 November 2005).

The report provides a number of clarifications requested by the Committee on how employees are protected under the Dutch legal system in cases of gender discrimination. Employees who believe they have been discriminated against on the ground of sex may resort to the Equal Treatment Commission or take action in the civil courts. Section 8a of the Equal Treatment Act (which makes it unlawful to penalise a person who has invoked a breach of the Act in or out of a court) will apply to both proceedings before the Commission or the civil courts. Other measures to protect employees are contained in general provisions of civil law, under which courts may oblige an employer to reverse a decision, reinstate a person, or pay compensation or wages which are due.

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[1] Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

On the question of equality of pay between men and women, the Committee has in the past come to a conclusion of non-conformity both under Article 4§3 and Article 1 of the Additional Protocol on the grounds that the notion of remuneration used for the application of the principle of equal pay was not sufficiently large as it excluded benefits or rights linked to a pension scheme (Conclusions XVI-2, Article 4§3, and Conclusions XVII-2, Article 1 of the Additional Protocol). The Committee acknowledges that this assessment was made on a misunderstanding on the legal framework on equal pay. It notes from the report that the civil code and Equal Treatment Act (which both contain the equal pay principle) were amended in 1998 following Directive 96/97/CE of 20 December 1996 on the implementation of the principle of equal treatment for men and women in occupational social security schemes. Noting therefore that the principle of equal treatment also applies to benefits or rights linked with a pension scheme, the Committee considers that the definition of pay is sufficiently wide, and in conformity with the requirements of the Revised Charter. The Committee nevertheless asks if legislation permits, in equal litigation cases, to make comparisons of pay and jobs outside the company directly concerned.

In reply to the Committee, the report indicates that employees on short part-time contracts (less than 12 hours a week) are sometimes excluded from the collective labour agreement. Studies on this have been carried out, but it has not been possible to assess the lawfulness of the discrimination on the basis of research results.

Specific protection measures

Discrimination on the grounds of pregnancy, childbirth and motherhood is prohibited under the Equal Treatment Act. Also, an employer may not terminate the employment contract of a pregnant employee during her pregnancy or her maternity leave (see Work and Care Act, and Civil Code). If an employer nevertheless dismisses a pregnant employee, she may demand reinstatement or claim financial compensation in a court of law.

Specific protection measures of women, particularly in connection with pregnancy and motherhood, or positive action to end *de facto* inequalities of women employees are permitted under Dutch legislation.

On the question of gender-specific occupations, the report recalls that the exclusion of certain occupational activities from the principle of equal treatment is permitted under the relevant EU Directive[1], and that on this basis a number of occupations have been included in the Gender-Specific Occupations Decree. The report indicates that the aim of the Ministry of Defence is to open all posts to men and women, provided they fulfil the job requirements, but in reply to the Committee explains the reasons for reserving occupations in the Royal Netherlands Marine Corps and the Netherlands Submarine Service to men. It states in this respect that all posts in the Marine Corps are combat posts which involve operating in small combat units in the front line. The Marine Corps has very high standards in terms of the physical abilities of candidates. The likelihood that a woman would meet those standards is so small that only a very small number of women would make it through the selection process. This has been confirmed by medical examinations of women for other physically demanding posts in the armed forces. The presence of a very small number of women within a unit, coupled with the fact that there is no privacy whatsoever under operational conditions, could lead to great tensions, which might disrupt deployment. In the Submarine Service, operational deployability might also be compromised by the lack of privacy combined with the fact that members of the Service are often obliged to spend long periods of time in a confined space. The Committee considers that such exclusions are justified under Article G of the Revised Charter.

Position of women in employment and training

The Committee takes note of the following trends from Eurostat[2]. In 2006, employment rates (women and men aged 15-64) were 67.7% for women, and 80.9% for men. This represents a decrease of over 4% in the gender gap in employment rates since 2001. The 2006 employment rate of women in Netherlands was above the EU-27 average, which stood at 57.2%.

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[1] Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (as amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002).

[2] Eurostat, Labour Force Survey (LFS), annual averages

Unemployment rates (women and men aged 15 and over) in 2006 were 5.0% for women, and 4.1% for men. The figures show an increase of both female and male unemployment rates in 2001, which were 2.5% and 1.8% respectively.

The share of women employees working part-time was 74.9% in 2007 while the corresponding figure for men was 23.7%. The Committee notes that the Netherlands is the country among all EU-27 where the proportion of women working part-time is the highest.

The share of women employees with temporary contracts was 18.0% in 2006 while the rate for men was 15.4%.

The Committee also notes that the pay gap between women and men (difference between men's and women's average gross hourly earnings as a percentage of men's average gross hourly earnings) was 18% in 2006, slightly above the EU-27 average (which has remained at 15% since 2003). According to the report, part of the pay gap can be attributed to characteristics such as the economic sectors in which women are employed and their positions, as well as age, education and length of employment with the same employer. The part of the pay gap which cannot be attributed to any special characteristic (unexplained), may be due to the research method used, or may reflect pay discrimination.

Measures to promote equal opportunities

An Equal Pay working group was established in 2005. Representatives of the social partners and the Equal Treatment Commission, supported by representatives of the Ministry of Social Affairs, participated in this group. Its main objective was to stimulate knowledge about equal pay legislation and enhance implementation of this legislation. The recommendations of the working group were presented to the Minister in March 2007. The Government's response to these recommendations have been sent to the House of Representatives. The Committee asks to be kept informed on any follow-up given to the aforementioned recommendations.

A Glass Ceiling Ambassadors Network was established in 2000. This group has a changing membership of 15-20 top business people and managers who spend one or two years boosting the promotion of women to senior posts. The impact of the network was evaluated in 2005. It was found that the promotion of women in participating

companies had risen more than in other companies. The network's biggest impact has been in encouraging the private sector to focus more on the added value of gender diversity.

Other measures indicated in the report are benchmarking, which is a digital self-screening tool that has been developed to allow companies to compare their gender diversity performance with other organisations in their sector. There are also measures to reach the target 25% of women senior civil servants by 2010.

The Committee notes from another source[1] that collective agreements rarely contain pay discrimination between men and women. If they do, it is indirect pay discrimination. They sometimes contain special provisions in which the social partners at sector level urge employers/managers to apply the equal pay principle, or to apply special procedures. The Committee recalls that the promotion of equal treatment of the sexes and equal opportunities for women and men by means of collective agreements is a prerequisite for the effectiveness of the right in Article 20 of the Revised Charter, and therefore requests that the next report contain information on any developments in this respect.

Finally, the Committee recalls that Recommendation No. (2007) 17 of the Committee of Ministers to member States on gender equality standards and mechanisms, adopted on 21 November 2007, should be taken into consideration by the authorities when preparing measures and policies on equal treatment and opportunities between men and women.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Netherlands is in conformity with Article 20 of the Revised Charter.

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[1] Report by the European Commission's Network of legal experts in the fields of employment, social affairs and equality between men and women

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

The Committee takes note of the information in the Netherlands' report.

Article 24 of the Revised Charter obliges States Parties to establish regulations with respect to termination of employment (at the initiative of the employer) for all workers who have signed an employment contract. To assess whether the regulations applied in cases of termination of employment are in conformity with Article 24, the Committee's examination will be based on:

– the validity of the grounds for dismissal under the general rules on termination of employment and increased protection against dismissal based on certain grounds (Article 24.a and the Appendix to Article 24);
– sanctions and compensation in cases of unfair dismissal and the status of the body empowered to rule on such cases (Article 24.b).

Scope

According to the report, protection in the event of termination of employment by the employer is governed by the Labour Relations Decree 1945 and Book 7, Title 10, section 9 of the Civil Code.

The Committee notes from the report that the protection in the event of termination of employment afforded by the Civil Code applies to all employees with an employment contract of indefinite duration but not to employees on a fixed-term contract or those on probationary period. The Committee asks for further information on the rules applicable to these categories of employees as regards protection in the event of termination of employment and in particular on the length of probationary periods.

The report further specifies that the Labour Relations Decree 1945 covers all persons who personally perform work in the service of another except for public servants, teachers, ministers of religion and domestic staff. The Committee asks for information on the rules applicable to these categories of employees as regards protection in the event of termination of their employment contracts. As regards public servants, the report points out that the relevant rules are

contained in the regulations governing the legal status of public servants which have their statutory basis in the Central and Local Government Personnel Act.

Obligation to provide a valid reason for termination of employment

Under the Labour Relations Decree, an employer may not terminate an employment contract (except in exceptional circumstances, see below) without the prior permission of the Central Work and Income Authority (CWI). The CWI will assess the employer's application on the basis of the criteria in the Termination of Employment Decree. The CWI can issue a permit for:

– termination on personal grounds;
– termination in the event of long-term incapacity for work (lasting longer than two years) or repeated sickness absence; or
– termination for commercial reasons.

A termination may be held to be unreasonable for instance if the consequences for the employee are very serious in comparison with the employer's interest in terminating the contract and in this case can be declared null and void.

An employer does not have to apply for a permit if the contract is being terminated for compelling reasons, such as improper conduct (culpable acts as explicitly defined in article 7:678 of the Civil Code) on the part of the employee, during a probationary period or in the event of bankruptcy or in other cases where the employer cannot reasonably be expected to continue the employment relationship.

The Committee requests the next report to provide a summary of significant case law showing how the aforementioned valid grounds for termination of employment are interpreted by the competent courts in practice. It asks in particular to what extent employment relationships may be terminated on economic grounds and to what extent courts are empowered to review the facts underlying a dismissal that is based on economic grounds invoked by the employer.

The Committee further asks whether Dutch law provides for termination of the employment relationship on the grounds of age. In this context it wishes to know how retirement ages (mandatory

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

The Committee holds that dismissal on the grounds of age will not constitute a valid reason for termination of employment unless a termination is, within the context of national law, objectively and reasonably justified by a legitimate aim such as legitimate employment policy, labour market objectives or the operational requirements of the undertaking, establishment or service and provided that the means of achieving that aim are appropriate and necessary. It wishes the next report to provide information on whether and how the legal framework complies with this approach.

As regards civil servants, the report states that the General Civil Service Regulations list all the grounds on which a civil servant may be dismissed such as reorganisation, incapacity due to illness, incompetence/incapacity other than due to illness, dereliction of duty and 'dismissal on other grounds'. The report specifies that legal protection for this category of employees is guaranteed internally in the objection phase, and externally in the review and appeal stages and the Committee asks the next report to provide further information in this respect.

A notice of dismissal may be effectuated verbally or in writing, but has in any event have to provide the grounds on which it is based. According to the report, failure to provide the reason of dismissal may lead to the decision being declared null and void or to liability for financial compensation for the employer. An employer must substantiate his request for termination to both the CWI and the courts, and establish that there is no alternative to this course of action.

Prohibited dismissals

The Committee points out that a series of provisions in the Charter and Revised Charter require more rigorous safeguards against dismissal on certain grounds:

– Articles 1§2; 4 §3 and 20: discrimination;
– Article 5: trade union activity;
– Article 6§4: participation in a strike;
– Article 8§2: maternity;
– Article 15: disability;
– Article 27: family responsibilities;
– Article 28: workers' representation.

Most of these reasons are also listed in the Appendix under Article 24 as reasons which do not justify dismissal. However, the Committee will continue to check whether national situations are in conformity with the Revised Charter in regard to these reasons when it examines the reports on each of these provisions. It thus restricts its examination of more rigorous protection against dismissal to the reasons listed in the Appendix under Article 24 which are not referred to elsewhere in the Revised Charter, namely:

– "the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities". The Committee considers that national legislation should contain an express safeguard, in law or case law, which protects employees against retaliatory dismissal if they turn to the courts or another competent authority to enforce their rights;
– "temporary absence from work due to illness or injury".

The Committee notes from the report that employment may not be terminated during, inter alia, illness of the employee. It observed that termination in the event of long-term incapacity for work lasting longer than two years or repeated sickness absence may justify dismissal and asks whether this means that dismissal on the ground of illness below the two years threshold is prohibited or what are the applicable rules regarding temporary absence from work due to illness or injury. It also wishes to know whether retaliatory dismissal is prohibited under Dutch law.

Remedies and sanctions

The Committee notes from the report that in assessing whether termination of employment requested by the employer shall be permitted, the CWI or civil court will give the employee an opportunity to present counterarguments. The CWI or the court may reject the request for termination, in which case the employer will not be permitted to terminate the contract.

If the employer does receive permission from the CWI, the employee has six months to apply to the court for reinstatement or financial compensation if he is of the opinion that the termination was manifestly unreasonable (articles 7:681 and 7:682, Civil Code).

The employer must present and substantiate at first instance the reasons for his request for termination or dissolution by the CWI or court. The employee is given an opportunity to make his views known during this procedure, and may present counterarguments. If the employee has recourse to the courts himself because he believes his dismissal was manifestly unreasonable, he must present persuasive arguments to substantiate his case. The Committee asks the next report to confirm that an employee may in any event appeal to the court against an approval of the CWI to terminate his or her employment contract.

The Committee further observes from the report that in the event of an unfair dismissal an employee may be reinstated and should reinstatement be not possible he or she has a right to claim damages. Other forms of financial compensation also exist. The Committee asks the next report to provide further information on compensation an employee may claim in the event a court has held his dismissal to be unfair. It asks in particular whether in these cases compensation is subject to a ceiling.

Conclusion

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

Article 25 – Right of workers to the protection of their claims in the event of the insolvency of their employer

The Committee takes note of the information in the Netherlands' report.

Article 25 of the Charter guarantees workers the right to the protection of their claims in the event of the insolvency of their employer. States Parties that have accepted this article have some discretion as to the form of protection they offer, so long as the protection is adequate and effective and includes situations where the employer's assets are insufficient to cover salaries owed or to justify the opening of formal insolvency proceedings (Conclusions France, 2003). To show that the protection is adequate, states must specify the average period that elapses from when claims are lodged to when payments are made and the overall proportion of workers' claims that are satisfied (Conclusions Sweden, 2003). Protection must at least extend to wages, and sums due for paid holidays and other paid absences, relating to a specific period. States may limit protection of these sums owed to a specified amount (Conclusions 2005, Estonia), so long as this is at a socially acceptable level. Certain categories of employees may, exceptionally, be excluded from Article 25 protection because of the special nature of their employment relationship. However, it is for the Committee to determine on each occasion whether the nature of the employment relationship warrants such an exclusion. Under no circumstances may this be a reason for the exclusion of part-time employees and employees on fixed-term or other temporary contracts.

According to the report, claims in the event of employer insolvency are protected by the Unemployment Benefits Act. It is not stated, however, whether this protection takes the form of preference or a guarantee. The Committee notes, however, that according to another source[1] the Netherlands has had a guarantee institution for wage claims since 1968. It asks for the next report to confirm this and in that case explain how the guarantee system works, and to state whether, in addition to this, there is legislation granting priority for wage claims.

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[1] www.ilo.org/public/french ; CONFREP-2002-12-0200-B-01-fr.doc

According to the report, insolvency covers situations in which an employer:

– has been declared bankrupt;
– has applied for protection from creditors;
– is subject to a personal debt repayment programme (or in receivership);
– is in a permanent state of inability to pay.

In the event of insolvency, the relevant court will determine, in accordance with the law, whether the employer is bankrupt, can apply for protection from creditors or must be subjected to a personal debt repayment programme. Whether the employer is deemed to be in a permanent state of inability to pay will depend on the particular circumstances. In this respect, the Committee notes that insolvency seems to require a specific procedure to be initiated. It asks whether employee protection also applies when businesses cease trading without being able to honour their commitments, but have not been formally declared insolvent or placed in receivership.

The Committee notes that protection of claims covers pay arrears for up to 13 weeks immediately prior to the termination of the employment relationship, pay for the applicable notice period, up to a maximum of six weeks, and holiday pay, holiday supplements and any sums owed by the employer to third parties (e.g. a pension fund) for up to one year prior to the end of the notice period. The Committee asks whether workers' claims in respect of amounts owed for paid absences other than holiday pay are covered by the legislation. It also asks for an estimate of the overall percentage of workers' claims which are satisfied and the average time that elapses between the filing of the claim and the payment of any sums owed.

The report states that all people who are regarded under the Unemployment Benefits Act as private or public sector employees are protected in the event of employer insolvency. Certain types of employment relationship are, however, not covered by the act. The Committee asks which types of employment relationship are concerned.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Netherlands is in conformity with Article 25 of the Revised Charter.

The Netherlands Antilles

Article 1 — Right to work

Paragraph 1 – Policy of full employment

The Committee takes note of the information provided in the Netherlands' report with regard to the Netherlands Antilles.

It notes that an important reform was adopted during the reference period, namely the transfer of powers from the autonomous federal government of the Netherlands Antilles to the island territories of Curaçao, Sint Maarten, Bonaire, Saba and Sint Eustatius.

Employment situation

The Committee notes that, according to the report and another source[1], growth in the Netherlands with regard to the Netherlands Antilles speeded up slightly during the reference period (from 1.1% in 2004 to 1.5% in 2006).

Employment rates in 2006 were 46% in Curaçao, 52% in Bonaire and 58% in Sint Maarten. In Curaçao and Sint Maarten, the employment rate remained stable during the reference period, whereas in Bonaire it increased from 49% in 2004 to 52% in 2006. The Committee requests information on the female employment rate.

The unemployment rate fell from 15.1% in 2004 to 13.2% in 2006. Unemployment among young people (15-24) decreased from 44% in 2005 to 37.8% in 2006. The Committee cannot find any information in the report on the female unemployment rate. It asks for this to be included in the next report.

The Committee notes that long-term unemployment increased, and was still higher on Curaçao than on the other islands, where the proportion of the unemployed for over 12 months increased from 47% in 2004 to 54% in 2006. In 2006 this proportion was 32% in Bonaire and 18% in Sint Maarten.

In 2006, the majority of immigrants on the Curaçao labour market were Dutch (88%), Columbian (4%) or Dominican (2%). In Bonaire, there were slightly fewer Dutch (85% in 2006) and there were as

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[1] CIA World Factbook website: https://www.cia.gov/library/publications/the-world-factbook/rankorder/2129rank.html

many Venezuelans as Columbians and Dominicans (3% each in 2006). The relative proportions of immigrants on the Sint Maarten labour market were quite different, however. Dutch nationals still formed the majority (48% in 2006) but the second largest group was Haitians (10%), followed by Guyanese and Jamaicans (7% each).

Employment policy

According to the report, the main aims of government policy were as follows:

– to reconcile labour market flexibility and security of employment;
– to facilitate access to training and skills upgrading;
– to combat unemployment among young people.

Trade unions and employers' organisations are currently being consulted on the subject of the main aims of employment policy. However, no details are provided on the content of this policy.

The Committee asks for information in the next report on the number of beneficiaries of active measures. It also asks for the next report to give information on total expenditure on active and passive employment measures, specifying what proportion is devoted to active measures.

The Committee notes again that the authorities fail to present a budget for employment policies. Neither does the report describe any specific measures designed to facilitate access to the labour market for those categories of the population most prone to unemployment. The Committee therefore considers that the situation is still not in conformity.

Conclusion

The Committee concludes that the situation in the Netherlands with regard to the Netherlands Antilles is not in conformity with Article 1§1 of the Charter as the efforts being made in the area of employment policy are inadequate in the light of the prevailing employment situation.

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

The Committee takes note of the information provided in the Netherlands's report with regard to the Netherlands Antilles.

1. Prohibition of discrimination in employment

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

As with other States Parties that have accepted Article 1 of the Protocol, the Committee will examine the Netherlands with regard to the Netherlands Antilles' legislation banning sex discrimination under this provision.

The Committee found previously (Conclusions XVI-1 and XVIII-1) that the legislation prohibiting discrimination in employment was inadequate. According to the report, only a few new texts are being prepared.

The Committee asks to be informed of any changes that might be made, but while there is no change in the legislation, it must renew its finding of non-conformity on this ground.

A draft ordinance on equal treatment was finalised in November 2006. However, according to the report, the Government has preferred to concentrate on reducing youth unemployment rather than enacting the ordinance. The Committee asks for information on the content of this draft ordinance and its current status.

The Committee recalls that under Article 1§2 of the Charter remedies available to victims of discrimination must be adequate, proportionate and dissuasive. Therefore the imposition of pre defined upper limits to compensation that may be awarded are not in conformity with Article 1§2 as in certain cases these may preclude damages from being awarded which are commensurate with the actual loss suffered and not sufficiently dissuasive.

In the absence of any information in the report, the Committee asks again if there is any upper limit on the compensation that may be awarded in cases of discrimination, including those in which

employees have been dismissed having filed complaints of discrimination.

The Committee indicates that in disputes relating to an allegation of discrimination in matters covered by the Charter, the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment. In the absence of any information in the report, the Committee asks again what the situation is in this respect.

The Committee also points out that to ensure that the prohibition on discrimination is effective, states must allow associations, organisations or other legal entities which, in accordance with criteria set by national legislation, have a legitimate interest in ensuring conformité with equal treatment within the meaning of Article 1§2 of the Charter to seek a ruling in court that the prohibition on discrimination in employment has been infringed and to support those who consider themselves to have been victims of discrimination. In the absence of any information in the report, the Committee asks again what the situation is in this respect.

According to the report, the Civil Code is being revised. Chapter 7, on labour agreements, should be adopted before the end of 2009. One of its main effects will be to codify the current practice of courts in the processing of sex discrimination cases. The Committee asks for the next report to describe the texts adopted and report on their implementation.

The Committee recalls that under Article 1§2 of the Charter, states may make foreign nationals' access to employment subject to possession of a work permit, but they may not issue a general ban on nationals of States Parties occupying jobs for reasons other than those set out in Article 31. Restrictions on the rights embodied in the Charter are only acceptable if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society to safeguard the rights and freedoms of others or protect the public interest, national security, public health or morals. The only jobs from which foreigners may be barred are therefore those that are inherently connected with the protection of law and order or national security and involve the exercise of public authority.

In the absence of any information in the report, the Committee asks again if there are restrictions on foreign nationals' access to certain sectors or services.

The Committee previously asked several questions about Section 97 of the Antillean Ordinance on Material Rights of Civil Servants, under which a civil servant could be relieved of his duties on grounds of an "apparent revolutionary disposition" or membership of a society which the Governor, after consulting with the Advisory Council, had declared a risk to or harmful to the proper performance of the duties of the civil servant, because of the goals it pursued or means it used. According to previous reports, this provision has never been applied. Fearing that Section 97 could be used to discriminate on grounds of membership of a political party, a trade union or a religion, the Committee asked what the justification for this provision was and why it was necessary to retain it. According to the previous report, the possibility of repealing this section was being considered. In the absence of any information in the current report, the Committee asks again to be informed of any change in this respect.

2. Prohibition of forced labour

Prison work

The Committee notes the information on prison work supplied by the government in previous reports. The Prison Code (PB 1996, No. 73) sets out the rules on prison work. It is performed on a voluntary basis and prisoners may not work for private companies. The work consists primarily of domestic service and the manufacturing of objects. To gain a more accurate idea of the situation, the Committee asks for information on prisoners' employment conditions and how they are established.

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

Privacy at work

In the General Introduction to Conclusions XVIII-1, States Parties are invited to "include in their next report information allowing the Committee to assess how employees' individual dignity and freedom are protected by legislation or through case law of courts from interference in their private or personal lives that might be associated

with or result from the employment relationship" (Conclusions XVIII-1, General Introduction, §37). The Committee notes that the report does not contain this information. It therefore asks for the next report to provide this information in the light of the observations on Article 1§2 in respect of the right to privacy (Conclusions XVIII-1, General Introduction, §§ 13-21).

Restrictions linked to the fight against terrorism

The Committee again invites the Government to reply to its question in the General Introduction to Conclusions XVIII-1 as to whether any legislation against terrorism precludes persons from taking up certain types of employment.

Service required to replace military service

There is no compulsory military service.

Conclusion

The Committee concludes that the situation in the Netherlands with regard to the Netherlands Antilles is not in conformity with Article 1§2 of the Charter on the ground that the legislation prohibiting discrimination in employment is inadequate.

Paragraph 3 – Free placement services

The Committee takes note of the information in the Netherlands's report with regard to the Netherlands Antilles. The report contains very little information.

According to the report, a total of 1,831 vacancies were notified to the employment services in 2006 (950 in Curaçao, 261 in Bonaire and 620 in Sint-Maarten). The Committee asks again for more detailed figures showing the changes during the reference period.

There is nothing in the report about the placement rate of public employment services. The Committee requests that this information be contained in the next report.

In order to be able to assess the situation, the Committee requests information on other performance indicators such as numbers of visits to, or contacts with, employers or the average time needed to

fill a vacancy. It also asks for information on the total number of staff in the public employment services.

Conclusion

The Committee concludes that the situation in the Netherlands with regard to the Netherlands Antilles is not in conformity with Article 1§3 of the Charter as it has not been established that the right to free placement services is guaranteed.

Paragraph 4 – Vocational guidance, training and rehabilitation

The Committee takes note of the information provided in the Netherlands's report with regard to the Netherlands Antilles.

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. States must provide these services, grant access to them to all those interested and ensure equality of treatment for nationals of other States Parties and for persons with disabilities.

Article 1§4 is completed 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, education and training), which contain more specific rights to vocational guidance and training. However, Netherlands with regard to the Netherlands Antilles has not accepted these provisions and the Committee assesses the conformity of the situation under Article 1§4.

The Committee considers the following issues from the standpoint of Article 1§4:

– whether the labour market offers vocational guidance and training services for employed and unemployed persons and guidance and training aimed specifically at persons with disabilities;
– access: how many people make use of these services;
– the existence of legislation explicitly prohibiting discrimination on the ground of disability in the field of education and training.

Vocational guidance

Due to a lack of information, the Committee would like the next report to provide more detailed information on the organisation offering vocational guidance in the labour market. It asks whether vocational guidance is provided free of charge.

The Committee would like to know precisely what provision there is for guidance for persons with disabilities.

Continuing vocational training

No information on this subject is given in the report.

In its previous conclusion (Conclusions XVI-2), the Committee noted that vocational training was provided by the national vocational training centre (FEFFIK) and the FORMA Foundation. The Committee asks for up-to-date information in the next report on the continuing vocational training on offer to workers and unemployed people in all the islands of the Netherlands with regard to the Netherlands Antilles (Curaçao, Bonaire and Saint-Marten).

The Committee asks approximately how many training placements or courses are on offer and how many people take advantage of the training provided by the various institutions and services so that it can assess more accurately whether training supply meets training demand. In the event that companies organise training courses, the Committee asks whether employees' training costs are covered by the company or the trainees themselves.

Guidance, education and training for persons with disabilities

The report refers to a conference held in Curaçao on 21 February 2008 (outside the reference period), which covered subjects including the vocational training of people with disabilities and their full integration into the labour market. The Committee asks for the next report to state, in particular, the measures taken to provide persons with disabilities with education, guidance and vocational training wherever possible or, where this is not possible, through specialised bodies, public or private.

The Committee also asks for information on the number of people benefiting from such services.

The Committee asks if nationals of other parties to the Charter and the Revised Charter residing or working lawfully in the Netherlands with regard to the Netherlands Antilles on Bonaire or Sint-Maarten are guaranteed equal treatment.

The Committee points out that, in its previous conclusion (Conclusions XVI-2), it found the situation not to be in conformity with the Charter because, for lack of information, it had not been established that workers with disabilities had guaranteed access to vocational guidance, training and rehabilitation. In the absence of any information in the report, the Committee renews its finding of non-conformity.

Conclusion

The Committee concludes that the situation in the Netherlands with regard to the Netherlands Antilles is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that vocational guidance, continuing vocational training of workers and vocational rehabilitation for persons with disabilities are guaranteed.

Article 1 of the 1988 Additional Protocol – Right to equal opportunities and treatment in employment and occupation without sex discrimination

The Committee takes note of the information provided in the Netherlands's report with regard to the Netherlands Antilles.

The Committee notes from the report that there have been no substantial changes to the situation, which it has previously considered to be not in conformity with the Charter. Although the report indicates that a draft Ordinance on Equal Treatment and a new provision on gender equality will be introduced into the Civil Code, until such drafts texts are formally adopted and enter into force, the Committee must reiterate its conclusion of non-conformity.

Conclusion

The Committee concludes that the situation in the Netherlands with regard to the Netherlands Antilles is not in conformity with Article 1 of the Additional Protocol on the grounds that the legal framework prohibiting discrimination in employment is inadequate, and because of a lack of measures to promote the employment of women.

Aruba

The Committee reiterates that the Netherlands failed to respect its obligation, under the Charter, to report on the implementation of this treaty with regard to Aruba. Under the circumstances, the Committee could not reach any conclusion in respect of the accepted provisions of this supervision cycle (i.e. Article 1 of the Charter and Article 1 of the Additional Protocol).

The Committee recalls that in its previous examination of these Articles, it concluded that the situation in the Netherlands with regard to Aruba was not in conformity with the Charter in respect of:

– Article 1§2: Legislation prohibiting discrimination in employment is inadequate (Conclusions XVIII-1).

– Article 1 of the Additional Protocol: 1) The legal safeguards against discrimination in employment are inadequate; 2) Legislation excludes women from night work; 3) No particular steps are taken to promote women's access to employment.

Moreover, in respect of Article 1§1 and Article 1§3, the Committee had not reached a conclusion pending receipt of further information.

Chapter 18 – Conclusions concerning Articles 1, 9, 10, 15, 20, 24 and 25 of the Revised Charter in respect of Norway

Introduction

The function of the European Committee of Social Rights is to assess the conformity of national law and practice with the European Social Charter and the Revised Charter. In respect of national reports, it adopts "conclusions" and in respect of collective complaints, it adopts "decisions".

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

The Revised European Social Charter was ratified by Norway on 7 May 2001. The time limit for submitting the 5th report on the application of the Revised Charter to the Council of Europe was 31 October 2007 and Norway submitted it on 13 February 2008.

This report was the first under the new system for the submission of reports adopted by the Committee of Ministers.[2] It concerned the accepted provisions of the following articles belonging to the first thematic group "Employment, training and equal opportunities":

– the right to work (Article 1),
– the right to vocational guidance (Article 9),
– the right to vocational training (Article 10),
– the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
– the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
– the right of men and women to equal opportunities (Article 20),

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

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

– the right to protection in cases of termination of employment (Article 24),
– the right of workers to the protection of claims in the event of insolvency of the employer (Article 25).

Norway has accepted these articles with the exception of Article 18.

The applicable reference period was 1 January 2005 – 31 December 2006.

The present chapter on Norway concerns 16 situations and contains:

– 10 conclusions of conformity: Articles 1§1, 1§4, 9, 10§1, 10§2, 10§3, 15§2, 20, 24 and 25;
– 4 conclusions of non-conformity: Articles 10§4, 10§5, 15§1 and 15§3.

In respect of the 2 other situations concerning Articles 1§2 and 1§3, the Committee needs further information. The Government is therefore invited to provide this information in the next report on the articles/provisions in question.

The next Norwegian report deals with the accepted provisions of the following articles belonging to the second thematic group “Health, social security and social protection”:

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

The deadline for the report was 31 October 2008.

Article 1 — Right to work

Paragraph 1 – Policy of full employment

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

Employment situation

The Committee notes that, according to Eurostat, economic growth in Norway slowed down during the reference period, to 2.8% in 2006 compared with 3.9% in 2004.

The employment rate continued its upward trend during the reference period, from 75.1% in 2004 to 75.4% in 2006, while the female rate remained stable, at 72.2% in 2006. These rates are above the EU-15 average (66.2% and 58.7% respectively in 2006).

Although the overall unemployment rate remained stable at 4.6% in 2006, the rates among women and young persons (15-24) fell, respectively, from 4% and 11.4% in 2004 to 3.4% and 8.8% in 2006.

Long-term unemployment as a percentage of total unemployment rose, from 18.1% in 2004 to 23.2% in 2006, but is still well below the EU-15 average (42.1% in 2006).

The report states that no account is taken in labour market statistics of disability as such. It is only recorded if it occurred when the individual concerned was already in employment. Such occupationally disabled persons represent about 3% of the total active population.

The Committee asks for up-to-date information in the next report on unemployment among immigrants.

Employment policy

In reply to the Committee, the report refers to various measures taken to integrate immigrants into the labour market, particularly by means of vocational training and introductory programmes, encouraging business creation and establishing jobs in the public sector. Implementation of these measures is above all a local authority responsibility.

In the vocational training field, 40% of the participants in the "New Chance" programme have entered work or further education.

The introductory programme for newly arrived immigrants referred to in the report has enabled 53% of the participants to enter work or further education. A total of 8,800 persons, including 4,600 women, have taken part in this programme.

The Committee asks for updated information on the implementation of these programmes as well as on further measures targeted at other groups of the population, including the long-term unemployed.

In answer to the Committee, the report states that 67,462 persons on average took part in active measures during the reference period, an activation rate of about 76%.

According to the report, there are no statistics to show the average time that elapses between registration as unemployed and the offer of an active measure. The Committee requests that this information be made available in the next report.

It notes that total spending on active and passive employment policy measures remained stable during the reference period and was the equivalent in 2006 of 1.6% of GDP. The Committee notes that this is below the EU-15 average, which was 2% of GDP in 2006. The part devoted to active measures also remained stable and represented 0.6% of GDP in 2006.

Conclusion

The Committee concludes that the situation in Norway is in conformity with Article 1§1 of the Revised Charter.

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

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

1. Prohibition of discrimination in employment

The Committee notes that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of sex,

race, ethnic origin, religion, disability, age, sexual orientation and political opinion (Conclusions 2006).

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

As with other states that have accepted Article 15§2 of the Revised Charter, the Committee will examine Norway's legislation prohibiting discrimination based on disability under this provision. Similarly, for states such as Norway that have accepted Article 20, the right to equal treatment and opportunities without discrimination based on sex is considered under this provision. The Committee notes that discrimination based on sex is covered by the Gender Equality Act of 9 June 1978.

New legislation to protect employees and the working environment (WEA 2005) was enacted in 2005 and replaces the equivalent 1974 Act. Section 13§1 of the new law prohibits all forms of discrimination, direct and indirect, based on political view, trade union membership, sexual orientation, disability or age.

Section 13§2 makes the ban of discrimination applicable to all aspects of employment, including advertising of posts, appointments, training, pay and working conditions and termination.

Under section 13§4, exceptions are allowed where the discrimination has a just cause, does not involve excessive intervention and is necessary for the performance of work or profession.

In disputes relating to an allegation of discrimination in matters covered by the Charter, the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment. The Committee notes that under section 13§8 of WEA 2005, where an employee or job applicant submits information which

gives reason to believe that the legislation has been breached, it is for the employer to show that there has been no discrimination.

A new Discrimination Act was also passed in 2005 which prohibits discrimination based on ethnicity, religion, origin, descent, colour, language or philosophy.

The Committee asks why two distinct laws have been passed, one banning discrimination based on political view, trade union membership, sexual orientation, disability or age (WEA 2005) and the other on grounds of ethnicity, religion, origin, descent, colour, language or philosophy (the Discrimination Act), when previously the two categories of discrimination were covered by a single item of legislation. It asks for information on the differences between the two laws and the reasons for these differences.

It asks whether the Discrimination Act has the same rules as WEA 2005 in terms of scope, exemptions from the ban on discrimination and the burden of proof.

An act that came into force on 1 January 2006 established an equality and non-discrimination ombudsman, who covers all forms of discrimination outlawed by the aforementioned legislation. Persons who consider that they have been discriminated against may complain to the ombudsman, who will rule on the case. Appeals may be lodged against the ombudsman's decisions to an equality and anti-discrimination board of appeals, which may impose fines on those who do not abide by its decisions. The ombudsman also gives general legal advice on matters of discrimination.

Indirect discrimination is defined as any apparently neutral provision, condition, practice, act or omission which in fact places a person in a less favourable situation than others.

The notion of age discrimination covers all age groups, and therefore not just older people.

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

employer. The Committee notes from the report that the level of compensation for discrimination is determined by the courts according to the circumstances of the case, and that there is therefore no upper limit.

Under the Code of Civil Procedure, associations, organisations or other legal entities with a legitimate interest in securing equal treatment within the meaning of Article 1§2 of the Revised Charter are entitled to seek rulings that there has been a breach of the prohibition on discrimination. Whether or not there is deemed to be a legitimate interest depends on practical circumstances such as number of members and the organisation's objectives.

In the absence of a reply in the report, the Committee again asks what steps are taken to promote equality in employment.

Under Article 1§2 of the Revised Charter states may make foreign nationals' access to employment subject to possession of a work permit, but they may not issue a general ban on nationals of states party occupying jobs for reasons other than those set out in Article G. Restrictions on the rights embodied in the Revised Charter are only acceptable if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society to safeguard the rights and freedoms of others or protect the public interest, national security, public health or morals.

The only jobs from which foreigners may be barred are therefore those that are inherently connected with the protection of law and order or national security and involve the exercise of public authority.

Under the Constitution, only Norwegian citizens may be appointed to senior official positions in the state service. These include the Prime Minister, members of the Council of State, State Secretaries, senior officials of the diplomatic or consular service, commanders of regiments and other military formations, commandants of forts and officers commanding warships, judges, the attorney-general, public prosecutors, senior Government officials, ambassadors, certain police posts and county governors.

In the maritime sector, the captains of ships registered on the Norwegian register (NOR) and fishing boats must be nationals of the European Economic Area. On Norwegian international register (NIS) ships, non-EEA nationals may serve as captain if granted exemption.

The Committee asks for more information on these measures, in particular which are the possible exemptions.

2. Prohibition of forced labour

Prison work

According to the report, prisoners may not be required to undertake work, training and so on, other than in connection with necessary cleaning and other housework in prison. Prisoners may carry out various tasks, such as making wooden or metal objects, cutting grass or trees, painting, food preparation and laundry. As far as possible, prisoners' work preferences are taken into account. They very rarely work outside prison. Prisoners are covered by the relevant employment legislation (WEA 2005), when this is applicable. They receive training before carrying out specialist tasks and then work under the supervision of prison staff. The health and safety at work legislation also applies. Prisoners are paid 51 Norwegian kroner (NOK) (€ 6.53) a day.

Prisoners can be required to work for private undertakings or public/state bodies within or outside prison, under the supervision of prison staff. The report gives the impression that prisoners' consent may not be an automatic requirement. The Committee has ruled that prisoners may only be employed in workshops run by private companies with their consent and in conditions as close as possible to a private employment relationship (Conclusions XVI-1, Germany). It therefore asks for clarification on whether or not prisoners' consent is required before they can be asked to work, particularly for private undertakings or bodies.

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

Privacy at work

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

Restrictions linked to the fight against terrorism

There is no legislation restricting access to certain forms of employment as a precautionary measure against terrorism. However, official security clearance is required for certain positions. Finally, convicted persons may lose the right to be employed in certain positions.

Conclusion

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

Paragraph 3 – Free placement services

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

According to the report, although employers have a legal obligation to notify their vacancies to the public employment service (*Aetat*), they are not all notified in practice.

In reply to repeated requests from the Committee, the report states that there are no official statistics on placement rates, that is the number of placements made by the employment service in relation to the number of vacancies notified. The only statistics concern the number of job seekers who have found work. The Committee asks for such data to be provided in the next report.

In the absence of a reply, the Committee again asks what percentage of the market the public employment services cater for – in other words how many placements they make compared to total recruitments on the labour market.

It has already stated (Conclusions 2006 Norway) that these figures are indispensable in order to assess the real effectiveness of employment services. Should the next report fail to provide this information, there would be no evidence that the right to free employment services is guaranteed.

It also asks for other additional information in the next report, such as the number of jobseekers who have been in contact with or visited employers. It also asks for up-to-date information on the total number of staff in the public employment services.

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

Paragraph 4 – Vocational guidance, training and rehabilitation

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

As Norway has accepted Article 9, 10§3 and 15§1 of the Revised Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to guidance and vocational training for persons with disabilities are dealt with under these provisions.

The Committee concluded that the situation with regard to the vocational guidance (Articles 9) and continuing vocational training of workers (Article 10§3) is in conformity with the Revised Charter.

However, it found the situation not in conformity with the Revised Charter as regards Article 15§1 on the ground that the anti-discrimination legislation covering education for persons with disabilities is inadequate. Since this ground concerns education, it is not relevant under Article 1§4.

Conclusion

The Committee concludes that the situation in Norway is in conformity with Article 1§4 of the Revised Charter.

Article 9 – Right to vocational guidance

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

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

Vocational guidance within the education system

a. Functions, organisation and operation

The authorities in charge of education in the regions are responsible for providing pupils and students with a vocational guidance service. A major reform is being made to the school system under the heading "Promotion of knowledge" and will result in changes to vocational counselling. The Committee asks for the next report to provide information on how this reform is progressing.

b. Expenditure, staffing and number of beneficiaries

The Committee asks for information on expenditure, staffing and the number of beneficiaries of vocational guidance in the education system.

Vocational guidance in the labour market

a. Functions, organisation and operation

In 2006, the public employment, national insurance and municipal social welfare services were merged to form a new employment and social welfare office (the *NAV*). The merger helped to improve the co-ordination and interaction of local administrative offices and the services they provide. The reform resulted in a new vocational guidance strategy, which affects unemployed people, people with disabilities and immigrants in particular. The role of guidance counsellors was redefined and more was done to cater for the diversity of user needs. Vocational guidance is provided free of charge. The Committee asks for the next report to provide information on the outcome of the reform.

b. Expenditure, staffing and number of beneficiaries

According to the report, vocational guidance services are part of the *NAV* and there are no separate figures concerning expenditure, staffing or the number of beneficiaries. However, it will be possible to obtain these statistics once the reform has been completed. The Committee asks for the next report to provide information on expenditure, staffing and the number of beneficiaries of vocational guidance in the labour market.

Dissemination of information

The *NAV* has set up its own Internet site (www.nav.no), which provides information for jobseekers and employers. The site also has a special section for young people including tests which propose career choices on the basis of their personal interests.

Equal treatment of nationals of the other States Parties

The Committee notes that there has been no change in the situation which it previously considered (Conclusions 2005 and 2007) to be in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Norway is in conformity with Article 9 of the Revised Charter.

Article 10 – Right to Vocational Training

Paragraph 1 – Technical and vocational training and the granting of facilities for access to higher technical and university education

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

The Committee notes from the Norwegian report that there have been no changes to the situation which it has previously found to be in conformity with the Revised Charter (Conclusions 2007).

Conclusion

The Committee concludes that the situation in Norway is in conformity with Article 10§1 of the Revised Charter.

Paragraph 2 – Apprenticeship

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

The Committee has already looked into the organisation of the apprenticeship system in Norway (Conclusions 2005 and 2007) and considered it to be in conformity with the Revised Charter. The Committee notes that there have been no changes during the reference period.

Conclusion

The Committee concludes that the situation in Norway is in conformity with Article 10§2 of the Revised Charter.

Paragraph 3 – Vocational training and retraining of adult workers

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

Employed persons

The Committee has already examined the organisation of vocational training for employed persons (Conclusions 2005 and 2007) and found that the situation was in conformity with the Revised Charter. The Committee further notes from the report that an in-house training subsidy is specifically designed to prevent employees from being excluded from working life during major reorganisations.

In reply to the Committee's question regarding the training leave entitlement conditions the report indicates that according to the WEA Section 12-11, an employee who has worked for at least three years shall be entitled to full or partial leave for up to three years in order to attend organised courses of education. Disputes concerning educational leave shall be resolved by the Dispute Resolution Board which was established in 2006 and has, since its establishment, resolved three disputes.

Unemployed persons

In its previous conclusions (Conclusions 2007) the Committee asked for statistics concerning the participation in training programmes and also, how the financial burden of continuing training was shared among public bodies, employers and households. In this connection the Committee notes from the report that a major part of ordinary labour market measures is constituted by labour market courses (LMT). The courses are now considered to be the most important measure to qualify and update competencies among the unemployed and to strengthen their employment possibilities. The aim of LMT is to facilitate the labour market integration through vocational training adapted to the needs of employers. The Committee notes that the number of participants in LMT courses has been decreasing since 2004, when it amounted to 46,829 persons to 30,971 persons in 2006. According to the report this is related to the fact that the labour market has been improving, with the number of vacancies increasing and the number of job seekers decreasing. The Committee notes from Eurostat that the unemployment rate amounted to 4.4% in 2004 and to 3.5% in 2006, while the EU-15 average stood at 8.1% and 7.7% respectively.

As regards the Committee's second question, the report states that all labour market measures are purchased from and implemented by private or non-profit enterprises in close cooperation with the

Norwegian Labour and Welfare Service (NAV). Participants in labour market measures receive financial compensation paid by NAV in accordance with the rules and regulations for each programme. They are also entitled to subsistence benefits for the duration of the measure. Some participants also receive subsistence benefits from the municipal social welfare.

Conclusion

The Committee concludes that the situation in Norway is in conformity with Article 10§3 of the Revised Charter.

Paragraph 4 – Long-term unemployed persons

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

The Committee notes from Eurostat that the long-term unemployment rate in Norway amounted to 18.7 % in 2004 and to 23.2% 2006. The EU-15 average amounted to 42.1% in 2006.

The Committee notes from the report that all persons who are unemployed for more than six months are considered long-term unemployed for the purposes of vocational training aimed specifically at this category. They participate in different labour market measures, including courses, wage subsidies to employers, employment schemes and in-house training. These people have been treated as priority in 2005 and 2006. The report states that all labour market measures are implemented by private or non-profit enterprises in close cooperation with the employment and welfare service. The Committee requests information on the total spending on these measures.

In its previous conclusions (Conclusions 2005 and 2007) the Committee asked for information concerning measures specifically aimed at long-term unemployed persons, the number of such persons having participated in training programmes and the impact of such training on reducing long-term unemployment. The Committee notes that the report again does not provide this information. Therefore it holds that it has not been established that the situation in Norway is in conformity with Article 10§4 of the Revised Charter.

Conclusion

The Committee concludes that the situation in Norway is not in conformity with Article 10§4 of the Revised Charter on the ground that it has not been established that measures aimed at the retraining and re-integration of long-term unemployed persons are adequate.

Paragraph 5 – Facilities

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

Fees and financial assistance (Article 10§5 a and b)

In its previous conclusions (Conclusions XVI-2, 2005 and 2007) the Committee found the situation not to be in conformity with the Revised Charter in view of the length-of-residence and employment requirements imposed for entitlement to financial assistance for training for nationals of other States Parties lawfully resident or regularly working in Norway. The Committee notes that the situation has not changed in this respect. The report states that pupils and students from non-EEA states are eligible for State Educational Loan Fund (*Lånekassen*) if they have been employed in Norway for at least two years immediately prior to becoming a student. The Committee reiterates its finding of non-conformity on this point.

Training during working hours (Article 10.5 c)

The Committee notes from the report that training at the request of an employer will normally be counted as ordinary working hours if the training is held during the ordinary working time. In some cases, the training may be held during what normally is considered as the employees' off-duty time. Specific terms and conditions of such training is regulated in the employment contracts or in the wage agreements.

Efficiency of training (Article 10.5 d)

The Committee notes that there have been no changes to the situation which it previously found to be in conformity (Conclusions 2007).

Conclusion

The Committee concludes that the situation in Norway is not in conformity with Article 10§5 of the Revised Charter on the ground that nationals of other States Parties legally resident or regularly working in Norway are not treated on an equal footing with Norwegian students as regards financial assistance for education.

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

Paragraph 1 – Education and training for persons with disabilities

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

While reiterating its request for the total number of persons with disabilities, the Committee notes that the report acknowledges that the Norwegian National Census Bureau does not have any official statistics or survey concerning children with disabilities in the age group 0 to 18 years. However, the report points out that based on research, as well as on aggregate figures on how many children with disabilities receive specific measures, services and benefits, an unofficial estimation of 2005 showed that 2.7 per cent (approximately 33,000 children) out of all children up to 18 years (approx. 1,300,000) had been registered with some type of disability.

Definition of Disability

It is recalled that according to the Government White Paper 40 (2002-2003) disability "occurs when a gap exists between the capabilities of the individual and the functional requirements of his or her surroundings."

Anti-discrimination legislation

In its previous conclusion (Conclusions 2007), the Committee considered that during the reference period there was no sufficient non discrimination legislation in the field of education and thus found that the situation was not in conformity with the requirements of Article 15§1 of the Revised Charter. The Committee notes that there has been no change in the situation in this regard as the report indicates that in 2007/2008 (outside the reference period), the Government was supposed to submit to Parliament a draft Anti-discrimination and Accessibility Act. The Committee wishes to be informed on the status of the legislative procedure in the next report. It also particularly asks what is the Act's scope of application, whether it requires a compelling justification for special or segregated educational systems and whether it provides for effective

remedies for those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education.

Education

The Committee recalls from its previous conclusions (Conclusions 2005 and 2007) that mainstreaming is ensured in compulsory schooling and even in child day-care for all children with disabilities. It however reiterates its request for information on any case law and complaints brought to the appropriate institutions with regard to discrimination in compulsory schooling.

The Committee also reiterates its question on information about specialised education facilities

Vocational training

In its previous conclusions, the Committee asked to be kept informed about the improvements made by higher education institutions in order to implement the action plan for the disabled and higher education (1998-2002) and whether any follow-up was foreseen.

In this regard, the Committee notes from the report that the higher education institutions have each been given the responsibility to draw action plan documents to ensure a satisfactory working environment for the disabled. The Committee requests the next report to highlight the concrete impact of such documents in terms of increased integration of disabled students in higher education institutions.

Conclusion

The Committee concludes that the situation in Norway is not in conformity with Article 15§1 of the Revised Charter on the ground that the anti-discrimination legislation covering education for persons with disabilities is inadequate.

Paragraph 2 – Employment of persons with disabilities

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

The Committee requests the next report to provide up to date figures concerning:

- the number of persons with disabilities between 16 to 66 years of age (476,000 in 2004);
- the number of employed persons with disabilities (220,000 in 2004);
- the number of unemployed persons with disabilities (12,000 in 2004).

Anti-discrimination legislation

The Committee recalls that in its previous conclusion (Conclusion 2007) it considered that the Working Environment Act (WEA) was amended to include a Chapter on Equality of Treatment at work which brought the situation in conformity with Article 15§2 as regards the existence of anti-discrimination legislation. The amended Act in fact prohibits direct and indirect discrimination on the basis of disability and requires employers to implement the necessary measures to enable employees with disabilities to obtain or retain employment, perform and make progress in work, and have access to training.

The Committee had asked for information on the implementation in practice of the reasonable accommodation obligation (adjustment of working conditions to guarantee the effectiveness of the non-discrimination legislation in the field of employment). From the report, it notes that the national health insurance scheme contributes to the implementation of such reasonable accommodation obligation by financing certain “assistive devices” which are helpful in the workplace, such as tools to assist communication and movement, low vision aids, hearing aids, cognitive aids, etc.

The Committee also notes that the Labour Inspection Authority carries out inspections and may issue orders if employers fail to respect their reasonable accommodation duty. The Committee requests the next report to clarify the impact of such orders in practice in the workplaces.

In this context, the Committee also reiterates its specific questions concerning the implementation of the reasonable accommodation obligation, i.e. :

- Has the reasonable accommodation obligation given rise to cases before courts?
- Has the reasonable accommodation obligation prompted an increase in employment of persons with disabilities in the open labour market?

Measures to promote employment

The Committee notes that the measures to promote employment which it described and assessed positively in its previous conclusion have not changed.

The Committee notes that the agreement referred to under Article 10§3 (Agreement on a more inclusive working life - IW), is an additional measure to also promote employment and integration of disabled persons. The Committee acknowledges that as of 2007 (outside the reference period), the Government has initiated a pilot project called “Adaptation Guarantee” to ensure that necessary technical aid and support, need for adaptation and follow-up be provided in due time. The Committee asks the next report for information on the outcome of this project, as well as the new employment and welfare administration (NAV) implemented since the summer 2006.

The Committee observes from the report that in 2006 the number of persons with disabilities concerned by labour market measures increased to 95,620 (they were 57,000 in 2004). The report also specifies that 45% of such persons progressed to work. The Committee asks the next report to provide further details in this regard (progression rate to the ordinary labour market).

The Committee also observes that the number of persons with disabilities concerned by measures in sheltered enterprises increased too: 17,500 in 2006 (15,240 in 2004). It notes that such measures include rehabilitation training, clarification and qualification programmes. The Committee refers to its above-mentioned questions concerning the total number of persons with disabilities.

Conclusion

The Committee concludes that the situation in Norway is in conformity with Article 15§2 of the Revised Charter.

Paragraph 3 – Integration and participation of persons with disabilities in the life of the community

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

Anti-discrimination legislation and integrated approach

In its previous conclusion (Conclusions 2007), the Committee noted that a bill on the prohibition of discrimination on the ground of disability (the Anti-Discrimination and Accessibility Act) had been presented in 2005 and forwarded to the appropriate authorities. Its chief defining features were that it prohibited direct and indirect discrimination and made it compulsory to adapt facilities to individuals. According to the report, the Government will submit the bill to Parliament in 2007-2008.

The Committee reiterates that the right of persons with disabilities to social integration provided for by Article 15§3 implies that barriers to communication and mobility should be removed to offer them access to transport by road, rail, sea and air, public/social and private housing, and cultural activities and leisure, such as social and sporting activities. Article 15§3 therefore requires comprehensive non-discrimination legislation covering both the public and private spheres in fields such as housing, transport, telecommunications and cultural and leisure activities, and effective remedies for those who have been treated unlawfully.

The Committee asks for the next report to contain information on the Anti-Discrimination and Accessibility Act, and asks whether it applies to the areas covered by Article 15§3. Pending this information, it considers that the situation in Norway is not in conformity with the Revised Charter because, during the reference period, there was no anti-discrimination legislation which explicitly covered the fields of housing, transport, telecommunications and cultural and leisure activities.

Previously, the Committee asked whether the Anti-Discrimination and Accessibility Act was the outcome of the White Paper entitled "Dismantling disabling barriers: Strategies, aims and measures in the policy for people with impairments", or if other implementing measures were planned and how the various measures were co-ordinated. In reply, the report states that the Act is indeed the result

of the White Paper as far as the implementation of measures for people with disabilities is concerned. The Committee of State Secretaries and the Ministry of Labour and Social Inclusion co-ordinate the various measures described in the White Paper.

Consultation

The Government has its own Council on Disability, which acts as a consultative body on disability-related matters. Its members are organisations representing people with disabilities. There are also similar councils at local and regional level, which are active in numerous sectors of activity, such as education and health. Annual meetings take place between these organisations and the Council on Disability.

Forms of financial aid to increase the autonomy of persons with disabilities

All persons aged 18 to 67 residing or working in Norway have to be insured for disability-related risks and may claim a rehabilitation allowance if they have been insured for at least three years prior to the reason for their claim. Spending on technical aids and vehicles may also be covered.

Persons with a long-term disability (lasting over two or three years) may claim social assistance benefit. The National Insurance Act (section 10) describes the system of financial support for technical assistance.

Measures to overcome obstacles

Technical aids

The Committee refers to its statement of interpretation on Article 15§3 in the General Introduction to these conclusions.

According to the report, technical aids or personal assistance such as communication devices, sight and hearing aids, mobility aids (particularly wheelchairs), assistance with information technologies, interpreting services and guide dogs for the blind are provided to make persons with disabilities more independent.

The Committee asks whether persons with disabilities are entitled to free technical aids or must contribute themselves to the cost. If an individual contribution is required, the Committee asks whether the state provides some financial contribution to the cost of obtaining technical aids. It also asks whether disabled persons are entitled to free support services, such as personal assistance or home help, when required, or have to meet some of the cost of such measures. The Committee finally asks whether mechanisms are in place to assess the barriers to communication and mobility faced by individual persons with disabilities and to identify the technical aids and support measures that may be required to assist them in overcoming these barriers.

Communication

Over the reference period the Government continued to promote electronic communication for people with disabilities through its "eNorge 2009" action plan.

Mobility and transport

The report describes measures taken during the reference period under a specific programme to promote disabled access to road, rail, sea and air transport (a special financial arrangement in the budget of the Ministry of Transport and Communications, improved access to transport, reserved spaces and special sanitary facilities for people in wheelchairs and a special road and rail programme).

Housing

There is no specific provision concerning housing rights in legislation but the Government is required to provide appropriate housing for disadvantaged groups including people with disabilities. The Government's main aim is to increase the number of specifically adapted dwellings and residences. In 2006, 37% of Norway's social housing was fully accessible to wheelchair users whereas this was the case with only 7% of ordinary housing. The Committee asks for the next report to contain information on grants available to individual people with disabilities for home renovation work, lift installation and the removal of barriers to mobility, the number of beneficiaries of such grants and the general progress made on improving access to housing.

Culture and leisure

The Committee notes that there has been no change in the situation which it previously considered (Conclusions 2007) to be in conformity with the Revised Charter.

Conclusion

The Committee concludes that the situation in Norway is not in conformity with Article 15§3 of the Revised Charter on the ground that, during the reference period, there was no anti-discrimination legislation to protect persons with disabilities explicitly covering the fields of housing, transport, telecommunications and cultural and leisure activities.

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

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

Equal Rights

The Committee refers to its previous conclusions (Conclusions 2006) for a description of the legal framework.

Amendments were made during the reference period to the Gender Equality Act and Working Environment Act (WEA). For example part time workers (predominantly women) have the right to increase their working hours before employers appoint new staff and there is a right to work flexible working hours where this can be granted without significant disadvantage. Further, the Gender Equality Ombudsman and Gender Equality Board of Appeals were replaced by new bodies namely the Equality and Anti discrimination Ombudsman and the Equality and Anti Discrimination Tribunal which enforce the prohibition on discrimination not only on grounds of sex.

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

The report states that the Norwegian labour market is one of the most gender segregated in Europe. Measures are in place to address aspects of this, for example positive action measures have been taken to encourage women to enter fields of higher education where they are underrepresented and likewise men have been encouraged to enter certain professions working with small children.

The Ministry of Education and Research has prepared a Strategic Plan for Gender Equality 2007-2012, this will focus on young persons and children under the age of 19.

The segregation of the labour market, according to the report, accounts for the gender pay gap which remains at about 15/16%.

The monitoring of women in senior management positions continued during the reference period. Various measures have been taken to

increase the proportion of women in senior management in particular in the public sector.

Conclusion

The Committee concludes that the situation in Norway is in conformity with Article 20 of the Revised Charter.

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

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

It observes that a new Act of 17 June 2005 No. 62 relating to working environment, working hours and employment protection, etc. (WEA 2005) entered into force on 1 January 2006 and replaced the previously applicable Norwegian Working Environment Act from 1977 (WEA 1977). The report specifies that the regulations concerning termination of employment relationships are now to be found in the WEA 2005 chapter 15 and the regulations relating to proceedings concerning termination of employment etc. in chapter 17. The central provisions concerning protection against unfair dismissal are now included in Section 15-7 subsections 1 and 2 of the WEA 2005, which replaced the former WEA's 1977 Section 60 subsections 1 and 2. According to the report, the provisions of the WEA 2005 as regards protection in cases of termination of employment are mainly identical with the previous regulations in WEA 1977.

Scope

The Committee refers to its previous conclusions on Article 24 (Conclusions 2005 and 2007) where it has found that the scope of the provisions dealing with the protection against dismissals is in conformity with the requirements of the Revised Charter. The report confirms that protection against dismissal applies to all employees.

Obligation to provide a valid reason for termination of employment

The Committee finds that the situation regarding the valid reasons for termination of employment as examined in its previous conclusions continues to be in conformity with Article 24 of the Revised Charter under the WEA 2005.

Pursuant to Section 15-7 subsection 1 of the WEA, employees may not be dismissed unless this is objectively justified on the basis of circumstances relating to the undertaking, the employer or the employee. As regards the termination of employment on the grounds of age, Section 15-7 subsection 4 of the WEA 2005 stipulates that dismissal before an employee reaches 70 years of age due solely to

the fact that the employee has reached pensionable age pursuant to the National Insurance Act shall not be deemed to be objectively justified. The Committee notes from another source that standard pensionable age according to the national insurance scheme is 67[1]. Section 15-7 subsection 4 of the WEA 2005 further states that after the employee reaches 66 years of age, but not later than six months before he reaches pensionable age, the employer may inquire in writing whether the employee wishes to retire from his post upon reaching pensionable age. A reply to this inquiry must be returned in writing not less than three months before the employee reaches pensionable age. Provided that this is expressly stated in the inquiry, protection against dismissal under the preceding paragraph lapses if no reply is received within the time stated.

The Committee holds that dismissal on the grounds of age will not constitute a valid reason for termination of employment unless a termination is, within the context of national law, objectively and reasonably justified by a legitimate aim such as legitimate employment policy, labour market objectives or the operational requirements of the undertaking, establishment or service and provided that the means of achieving that aim are appropriate and necessary. In this context it wishes the next report to provide information on what are the underlying aims of the aforementioned provision of the WEA 2005.

The report further states that the Ministry of Labour and Social Inclusion currently is in the process of evaluating whether Section 15-7 subsection 4 of the WEA 2005 is in compliance with Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation[2] and the Committee asks for information on the findings of the Ministry in this respect.

Prohibited dismissals

The Committee examined the situation as regards dismissals prohibited under Norwegian law in its Conclusions 2005 and found

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[1] Website of the European Foundation for the Improvement of Living and Working Conditions (www.eiro.eurofound.eu.int).

[2] Official Journal L 303, 2.12.2000, p.16-22.

the situation to be in conformity with the Revised Charter. The Committee had in particular noted that pursuant to Section 64 of the WEA 1977 employees were protected from dismissal for the first six months following a period of incapacity and the first twelve months if the employee has been employed by the company for five consecutive years or more. It observes that under the WEA 2005 the 12 months period following a period of incapacity has been extended to all employees.

Remedies and Sanctions

In its Conclusions 2005, the Committee noted that unless it is alleged that a dismissal is discriminatory, the burden of proof lies with the plaintiff. The Committee holds that in proceedings regarding unfair dismissals, the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment between employee and employer. It asks the next report to specify whether Norwegian law provides for such an adjustment.

Conclusion

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

Article 25 – Right of workers to the protection of their claims in the event of the insolvency of their employer

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

The Committee points out that in the event of the insolvency of their employer, workers' preferential claims are protected by a guarantee institution. This mainly covers wage claims for up to the four months preceding the beginning of insolvency proceedings and claims in respect of paid leave accrued over a total of 24 months, as well as the interest payable on both types of claim. It also covers compensation for loss of salary, the costs of proceedings to recover wage claims and costs relating to the opening of bankruptcy proceedings.

The Committee also reiterates that the maximum sum that can be paid is adjusted annually in accordance with the social security base amount. According to the report, this sum was 125,784 kroner (NOK) (about € 15,700) during the reference period. Costs connected with the opening of bankruptcy proceedings are not included in this sum and are reimbursed separately.

In its previous conclusions (Conclusions 2005), the Committee asked whether the guarantee institution covered workers' claims in respect of amounts owed for absences other than paid leave. In the absence of any reply, the Committee repeats its question.

The report states that the guarantee institution is financed directly by the state. Therefore, claims are still protected even where employers have not paid the relevant contributions. Although the guarantee institution covers workers' claims only if formal insolvency proceedings have been initiated against their company, there is adequate protection, because costs relating to the opening of bankruptcy proceedings are covered separately by the guarantee institution.

The report also states that the average time that elapses between the filing of claims and the payment of any sums owed is six weeks. The Government is not able, however, to provide an estimate of the overall percentage of workers' claims which are satisfied through the guarantee system. In this connection, the report states that in 2006, some 6,500 workers were affected by bankruptcy proceedings and

most of their preferential claims were reimbursed by the guarantee institution.

The Committee notes that the Wage Guarantee Act has been amended to be in accordance with Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002[1] and that company board members and general managers, who were not covered by the wage guarantee during the previous reference period, are now covered. The result of this is that only employees with a 20% holding in the company or more are excluded from the protection afforded by the guarantee institution if they can be held responsible for the bankruptcy.

Conclusion

The Committee concludes that the situation in Norway is in conformity with Article 25 of the Revised Charter.

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[1] Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer.

Chapter 19 – Conclusions concerning Articles 1, 9, 10, 15, 18, 20, 24 and 25 of the Revised Charter in respect of Portugal

Introduction

The function of the European Committee of Social Rights is to assess the conformity of national law and practice with the European Social Charter and the Revised Charter. In respect of national reports, it adopts "conclusions" and in respect of collective complaints, it adopts "decisions".

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

The Revised European Social Charter was ratified by Portugal on 30 May 2002. The time limit for submitting the 3rd report on the application of the Revised Charter to the Council of Europe was 31 October 2007 and Portugal submitted it on 10 April 2008.

This report was the first under the new system for the submission of reports adopted by the Committee of Ministers.[2] It concerned the accepted provisions of the following articles belonging to the first thematic group "Employment, training and equal opportunities":

– the right to work (Article 1),
– the right to vocational guidance (Article 9),
– the right to vocational training (Article 10),
– the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15)
– the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
– the right of men and women to equal opportunities (Article 20),

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

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

– the right to protection in cases of termination of employment (Article 24),
– right of workers to the protection of claims in the event of insolvency of the employer (Article 25).

Portugal has accepted all these articles.

The applicable reference period was 1 January 2005 – 31 December 2006.

The present chapter on Portugal concerns 20 situations and contains:

– 13 conclusions of conformity: 1§1, 1§3, 1§4, 9, 10§1, 10§2, 10§3, 15§1, 18§2, 18§3, 18§4, 24 and 25;
– 3 conclusions of non-conformity: 1§2, 10§5 and 20.

In respect of the 4 other situations concerning Articles 10§4, 15§2, 15§3 and 18§1, the Committee needs further information. The Government is therefore invited to provide this information in the next report on the articles/provisions in question.

The next Portuguese report deals with the accepted provisions of the following articles belonging to the second thematic group "Health, social security and social protection":

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

The deadline for the report was 31 October 2008.

Article 1 — Right to work

Paragraph 1 – Policy of full employment

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

Employment situation

The Committee notes that, according to Eurostat, growth in Portugal slowed down slightly during the reference period, from 1.5% in 2004 to 1.3% in 2006.

The general employment rate remained stable (67.9% in 2006), while the female employment rate increased, from 61.7% in 2004 to 62% in 2006.

The general, female and youth (15-24) unemployment rates all increased between 2004 and 2006, from 6.7% to 7.7%, 7.6% to 9% and 15.3% to 16.3% respectively. These rates are still similar to the EU-15 average (7.7%, 8.5% and 15.7% respectively in 2006).

The Committee notes that long-term unemployment as a percentage of total unemployment increased from 44.3% in 2004 to 50.2% in 2006 whereas the EU-15 average was 42.1% in 2006.

In the absence of a reply in the report, the Committee asks again for information on the unemployment rate of persons with disabilities and immigrants.

Employment policy

According to the report the Government's main priorities in this area are as follows:

– to promote job creation and combat unemployment;
– to improve the qualifications of the working population.

The Committee notes that employment for young people was a priority, particularly through the creation of two new programmes, one called Innov-Youth, which is aimed at all young jobseekers, and another called the Second Generation Choices Programme, which more specifically targets young immigrants. These programmes

propose training for young jobseekers (under the age of 35), who may also be awarded grants.

There are also broader programmes, aimed at all unemployed people, including programmes intended to stimulate entrepreneurship, integration and reintegration schemes, particularly in the event of economic redundancy, and a specific programme for immigrants called the Intervention Programme for Unemployed Immigrants. 1 676 immigrants took part in the latter programme in 2005.

Unemployed people now have personal employment plans drawn up for them, encouraging them to engage in active jobseeking. The unemployment benefits scheme was also reformed during the reference period to promote vocational integration or reintegration for the unemployed.

According to the report, the INSERJOVEM programme (for young jobseekers) and the REAGE programme (for adults) have been adjusted to meet the needs of those who are most vulnerable to unemployment. The Committee takes note of the results of these programmes, particularly the decline in the number of young jobseekers. It asks which vulnerable categories now benefit more from the INSERJOVEM and REAGE programmes.

The Committee asks how many people take part in active measures and what the activation rate is. It also asks how much time elapses on average between a person registering as unemployed and receiving an offer of an active measure.

It notes that total spending on active and passive employment policy measures remained stable during the reference period (at 1.8% of GDP) whereas the EU-15 average was 2% of GDP in 2006. The portion of spending devoted to active measures in 2006 was also stable (at 0.5% of GDP) and was equal to the EU-15 average in 2006.

Conclusion

The Committee concludes that the situation in Portugal is in conformity with Article 1§1 of the Revised Charter.

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

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

1. Prohibition of discrimination in employment

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

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

As with other states that have accepted Article 15§2 of the Revised Charter, the Committee will examine Portugal's legislation banning discrimination based on disability under this provision. Similarly, for states such as Portugal that have accepted Article 20, protection against discrimination based on sex is considered under this provision.

Articles 22 and 23 of the Labour Code prohibit all direct and indirect discrimination in employment based on age, sex, sexual orientation, civil status, family situation. genetic inheritance, reduced working capacity, disability, chronic illness, nationality, ethnic origin, religion, political or ideological convictions, trade union affiliation, language, race, educational level, economic situation and social origin or social condition.

The legislation covers discrimination in all areas of employment, including recruitment, dismissal and training.

Article 23§2 of the Labour Code authorises exceptions to the general ban on discrimination for jobs with certain key requirements for

occupational purposes. According to the report, the Government is not aware of any cases where this provision has been applied or of any case-law on the subject. If such occupations or exemptions from the legislation are identified in the future, the Committee asks to be informed of them.

The report states that there has not so far been any case-law on the concept of indirect discrimination in Section 32(2)b of Act 35/2004 of 29 July 2004. The same applies to discrimination based on age, as referred to in Articles 22§2 and 23§1 of the Labour Code. The Committee asks to be informed when there are interpretations of these notions.

Persons who consider that they have suffered discrimination on prohibited grounds may bring actions in the courts. In discrimination cases, the burden of proof may be shifted in favour of the complainant.

The Committee recalls that under Article 1§2 of the Revised Charter, any remedies available to victims of discrimination must be adequate, proportionate and dissuasive. Therefore the imposition of pre defined upper limits to compensation that may be awarded are not in conformity with Article 1§2 as in certain cases these may preclude damages from being awarded which are commensurate with the actual loss suffered and not sufficiently dissuasive. Under the Labour Code, victims of discrimination are entitled to damages, for which there is no upper limit, according to a combined reading of Articles 26 and 483ff of the Code.

In the absence of information in the report, the Committee again asks for further information on the functions and powers of the Commission for Equality and Non-Discrimination (CICDR) in enforcing and monitoring the application of the legislation prohibiting discrimination in employment.

The Committee notes that associations, organisations or other legal persons that, in accordance with criteria in national legislation, have a legitimate interest in securing conformity with equal treatment within the meaning of Article 1§2 of the Revised Charter are entitled to seek rulings that there has been a breach of the prohibition on discrimination. This is based on the right of *actio popularis* provided for in Article 52§3 of the Constitution and Act 83/95 of 31 August 1995, and concerns both private and public sectors.

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

The Committee has previously noted that there are no restrictions on access to employment based on nationality, which is legally prohibited, but that there are exceptions for public service posts involving the exercise of public authority. According to the report, these exceptions, provided for in Article 15§2 of the Constitution, are rare and are linked to the exercise of state authority and to national sovereignty, public order and security. The Committee again asks for more details about the types of public sector post that are restricted to Portuguese nationals.

2. Prohibition of forced labour

The Committee has previously found that the situation in Portugal is not in conformity with Article 1§2 of the Revised Charter because Articles 132 and 133 of the Merchant Navy Criminal and Disciplinary Code provide for sanctions against seafarers who abandon their posts, in particular prison sentences. The report contains no information on this matter. In the absence of further information, the Committee must repeat its conclusion of non-conformity on this point.

Prison work

Article 1§2 of the Revised Charter requires strict regulation of prison work, in terms of pay, working hours and so on, particularly when the prisoners work for private firms. Prisoners may only be employed by private enterprises with their consent and in conditions as close as possible to an employment relationship freely entered into (Conclusions XVI-1, Germany).

The Committee notes that there is no information in the report on prison work. It therefore again asks the Government to answer the questions on prison work in the general introduction to Conclusions 2006, namely:

– Can a prisoner be invited to work (irrespective of consent)

  A. for a private undertaking/enterprise?
    i) within the prison?
    ii) outside the prison?
  B. for a public/state undertaking?
    i) within the prison?
    ii) outside the prison?

– What types of work may a prisoner be obliged to perform?
– What are the conditions of employment and how are they determined?

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

Privacy at work

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

Restrictions linked to the fight against terrorism

The Committee again invites the Government to reply to its question in the General Introduction to Conclusions 2006 as to whether any legislation against terrorism precludes persons from taking up certain types of employment.

Conclusion

The Committee concludes that the situation in Portugal is not in conformity with Article 1§2 of the Revised Charter because the Merchant Navy Criminal and Disciplinary Code provide for prison sentences against seafarers who abandon their posts.

Paragraph 3 – Free placement services

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

It notes that there has been no change to the situation which it had previously considered to be in conformity with Article 1§3 (Conclusions 2006).

Conclusion

The Committee concludes that the situation in Portugal is in conformity with Article 1§3 of the Revised Charter.

Paragraph 4 – Vocational guidance, training and rehabilitation

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

As Portugal has accepted Article 9, 10§3 and 15§1 of the Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to guidance and vocational training for persons with disabilities are dealt with under these provisions.

The Committee concluded that the situation with regard to vocational guidance, continuing vocational training and rehabilitation of persons with disabilities (Articles 9, 10§3 and 15§1) is in conformity with the Revised Charter.

Conclusion

The Committee concludes that the situation in Portugal is in conformity with Article 1§4 of the Revised Charter.

Article 9 – Right to vocational guidance

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

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

Vocational guidance within the education system

a. Functions, organisation and operation

The National Centre for Guidance Counselling Resources (CENOR) forms part of the European Euroguidance Network, which operates under the aegis of the Leonardo da Vinci Programme and is co-funded by the European Commission and the national authorities in each country. It was set up to enhance the European dimension of Portugal's national education and vocational guidance system and provides services for students at all levels. It holds conferences, seminars, debates and workshops.

Young people who are on dual – academic and vocational – certification paths may also take advantage of the services of the Information and Vocational Guidance (IOP) centre.

b. Expenditure, staffing and number of beneficiaries

In the absence of any such information in the report, the Committee asks for information on expenditure, staffing and the number of beneficiaries of vocational guidance in the education system. It asks for this information to appear systematically in each report.

Vocational guidance in the labour market

a. Functions, organisation and operation

The Committee refers to its previous conclusion (Conclusions XVI-2) for a general description of the vocational guidance system in the labour market.

b. Expenditure, staffing and number of beneficiaries

According to the report, spending on vocational guidance in the labour market (based on figures provided by the Directorate of

Information and Vocational Guidance Services) was € 1.017 million in 2004 and € 708,524 in 2006. The Committee notes that these figures differ substantially from those given in the preceding conclusions, according to which equivalent spending in 1999 and 2000 was about € 25 million. It asks for the next report to explain the reasons for this difference.

Guidance counsellors have qualifications in psychology or sociology. There were 258 in 2004 and 242 in 2006. The decrease stems in part from the retirement of several specialists.

There were 252,286 beneficiaries in 2004 and 294,601 in 2006.

Dissemination of information

Information is disseminated through various means including brochures, leaflets, CD-ROMs and websites.

Equal treatment of nationals of the other States Parties

The Committee notes that there has been no change in the situation which it previously considered (Conclusions XVI-2) to be in conformity.

Conclusion

The Committee concludes that the situation in Portugal is in conformity with Article 9 of the Revised Charter.

Article 10 – Right to Vocational Training

Paragraph 1 – Technical and vocational training and the granting of facilities for access to higher technical and university education

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

Secondary and higher education

In its previous Conclusion (Conclusions XVI-2) the Committee took note of the organisation and functioning of the secondary and higher education system in Portugal and concluded that it was in conformity with the Charter. It further takes note of the organisation of the educational system as presented in the report.

Measures to facilitate access to education and their effectiveness

The Committee notes from the report that at the end of 2005 the Portuguese Government launched the new Opportunities Initiative (INO), the objective of which is to create better opportunities for young people with a view to improving their levels of schooling, vocational training and basic qualifications. Within the overall context of the strategic action, two projects were planned to be implemented by the end of 2006, namely to produce a National Qualifications Catalogue and to launch the foundations for a new methodology for designing competency-based qualifications. The Committee wishes to be kept informed about the implementation of these projects.

The Committee notes from the report that financing of the education system is assured by three principal sources – the general state budget, social security contributions made by employers and employees and the European Social Fund. The Committee notes from Eurostat that the total expenditure on education amounted to 5,4% of GDP in 2005.

Conclusion

The Committee concludes that the situation in Portugal is in conformity with Article 10§1 of the Revised Charter.

Paragraph 2 – Apprenticeship

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

In its previous Conclusion (Conclusions XVI-2) the Committee asked for information on the following issues: length of the apprenticeship and division of time between practical and theoretical learning; selection of apprentices; selection and training of trainers; remuneration of apprentices and conditions for termination of apprenticeship contracts. In reply the Committee notes from the report that the length of apprenticeship varies between 970 and 4,500 hours depending on its type. The share of practical training is at least 30% of the total training and is terminated by a job simulation exercise. The apprenticeship contract is made between the apprentice and the body responsible for training and contains the following clauses: object of the contract, place of training, timing, evaluation and certification criteria, rights and tasks of the apprentice and of coordinating bodies, validity of the contract, regulations, financing and applicable legislation.

Apprentices have a right to financial aid in the amount of 15% of the minimum monthly income guaranteed by the legislation (RMMG) which is paid out of the public funds. They also have a right to other aid such as food aid, accommodation, transport etc.

The Committee concludes that the situation in Portugal is in conformity with Article 10§2 of the Revised Charter.

Paragraph 3 – Vocational training and retraining of adult workers

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

Employed people

In its previous Conclusion (Conclusions XVI-2) the Committee noted that only 17% of employees had participated in some form of continuing vocational training and asked what measures were planned to increase their number. It notes from the report that this number rose to 22% in 2004 according to the Survey of the Execution of Vocational Training Actions. 24.6% of enterprises

undertook training actions in 2004 with € 262,4 as average cost per participant.

The Committee also asked what preventive measures were implemented against the deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic progress. In this connection the Committee notes from the report that a specific measure FACE has been implemented with a view to minimising the social cost of reorganisation and modernisation of enterprises through training measures. The Committee wishes to be informed about the results of this measure.

Unemployed people

The Committee notes from Eurostat that the unemployment rate in Portugal rose from 4% in 2001 to 7.7% in 2006. The EU 15 average amounted to 7.7% in 2006. The Committee asks what specific measures have been taken for unemployed persons and what is their activation rate – i.e. the ratio between the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 10§3 of the Revised Charter.

Paragraph 4 – Long-term unemployed persons

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

The Committee notes from Eurostat that the long-term unemployed rate in Portugal rose from 38% in 2001 to 50,2% in 2006. The EU 27 average stood at 45,6% in 2006.

The Committee recalls that in accordance with Article 10§4, States must fight long-term unemployment through retraining and reintegration measures. The main indicators of conformity with this provision are the types of training and retraining measures available on the labour market specifically for the long-term unemployed, the

number of persons in training and the impact of the measures on reducing long-term unemployment. The Committee asks that the next report provide this information.

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

Paragraph 5 – Facilities

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

Fees and financial assistance (Article 10§5 a and b)

In its previous Conclusions (Conclusions XIV-2 and XVI-2) the Committee asked whether the equality of access to financial assistance was ensured to nationals of other States Parties legally resident of regularly working in Portugal. It asked more specifically whether a specific period of prior residence or employment was required in order for nationals of other States party to be equally treated with respect to financial assistance for training. Since the report again does not provide this information, the Committee holds that there is nothing to show that the situation in Portugal is in conformity with the Revised Charter.

Training during working hours (Article 10§4 c)

In its previous Conclusion (Conclusions XVI-2) the Committee asked whether the time spent on supplementary training at the request of the employer was included in the normal working-hours. It notes from the report that according to Article 169, No 5 of the Law No 35/2004 the hours spent in training are included in normal working hours. An employee may as well request an unpaid leave in order to follow a training course.

Efficiency of training (Article 10§5 d)

In its previous Conclusion the Committee asked for information regarding the new procedure of evaluation of training put in place within the Vocational Training Centres of the Public Employment Service (IEFP). In this connection it notes from the report that the Good Practices Guide has been elaborated and the annual National

Good Practices Meetings have continued with a view to promoting a set of successful practices that can be disseminated among the various vocational training agents. In addition, a study to evaluate the strengths and weaknesses of vocational training centres has been conducted.

Conclusion

The Committee concludes that the situation in Portugal is not in conformity with Article 10§5 of the Revised Charter as it has not been established that the equality of treatment of nationals of other States Parties lawfully resident or regularly working in Portugal is guaranteed as regards financial assistance for training.

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

Paragraph 1 – Education and training for persons with disabilities

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

The report contains figures on persons with disabilities collected for a census in 2001 and a survey in 1994. According to these sources, persons with disabilities corresponded to 6.13% of the total population in 2001 and to 9.16% of the total population in 1994. According to the report, the decrease in the total amount of disabled persons is apparent and may be explained by the different methodologies used to collect and calculate the information. The report submits that its is most likely that persons with disabilities continue to be about 9% of the total population.

The report does not indicate the total number of persons with disabilities, including the number of children with disabilities (0-18 years of age) for the reference period (2003-2006). The Committee asks to be provided systematically with such information and expects the next report to contain clear up-to-date figures in this regard.

Definition of disability

The Committee notes that Article 2 of Law 38/2004 (see below), incorporates the social definition of disability as endorsed by the WHO in its International Classification of Functioning (ICF 2001), thus moving away from the medical definition which was previously used.

The Committee also notes from the report that the implementation of the ICF is progressive due to complexities encountered in the collection of all the necessary statistical data. In this regard, it has taken note that for rehabilitation, the definition of disabled person contained in Article 3 of Decree 247/89 of August 1989 is still applicable, i.e.: a disabled person is someone who, due to physical or mental limitations has difficulties in obtaining or maintaining a job corresponding to his/her age, qualifications and professional experience. The Committee asks the next report to clarify when this definition will cease to be used. It also asks to be up-dated on

progress in the application of the ICF in the fields of education and training.

Anti-discrimination legislation

The Committee recalls that, as stated in the Autism-Europe decision (Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §48), "the underlying vision of Article 15 is one of equal citizenship for persons with disabilities and, fittingly, the primary rights are those of "independence, social integration and participation in the life of the community. Securing a right to education for children and others with disabilities plays an obviously important role in advancing these citizenship rights". Under Article 15§1, the Committee therefore considers necessary the existence of non-discrimination legislation as an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes. Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education. Legislation may consist of general antidiscrimination legislation, specific legislation concerning education, or a combination of the two (Conclusions 2007, General Introduction, Statement of Interpretation on Article 15§1).

It should be noted that, in the view of the Committee, Article 15 applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age. It thus also covers both children and adults who face particular disadvantages in education, such as persons with intellectual disabilities.

The Committee notes the adoption, during the reference period of the following relevant legislation:

- Law 38/2004 on the Prevention, Habilitation, Rehabilitation and Participation of Persons with Disabilities, providing *inter alia* for equal opportunities for them with regard to lifelong education and training;
- Law 46/2006 explicitly prohibiting direct and indirect discrimination on the basis of disability *inter alia* with respect to education and training. In particular, the prohibition covers: (i) the denial or

limitation of access to public or private education establishments, or to any form of compensation/support appropriate to the specific needs of students with disabilities and (ii) the creation of classes or the taking of other internal organisational measures in public or private education establishments.

To establish how these two new laws are applied in practice, the Committee asks for more details in the next report on their implementation. In this context, the Committee also requests information on what remedies are available for persons with disabilities who find themselves unlawfully excluded or segregated or otherwise denied an effective right to education and training. It asks again whether the constitutional provisions guaranteeing everyone the right to education and equality of opportunity may be litigated by an individual.

The Committee also asks the next report to provide information on any case law and complaints brought to the appropriate institutions relating to discrimination based on disability in the fields of education and training.

Education

In its previous conclusion (Conclusions XVI-2), the Committee noted that the system of education is based on the principle of mainstreaming and that measures are available to enable integration such as support teachers and coordination teams. The Committee had also noted that most children with disabilities attended regular schools; however, it asked for updated information on the number of children integrated into mainstream schools and the number of those attending special schools.

The report indicates that 64,000 children and young people with limitations in the auditory, visual, cognitive, emotional and personality, motor, communication, language, speech and physical health fields, or with other educational needs were considered eligible for educational support in the 2005/2006 academic year. The report informs that in the same academic year, 9 854 teachers were allocated to regular and special education schools or groups of schools in order to provide this support together with 178 specialist staff. Even though the report affirms that only a small number of students with disabilities attended special education establishments

(less than 1%), it is not clear how many students with disabilities were integrated into mainstream schools and how many attended special schools.

As mentioned above, the Committee needs to know the total number of children with disabilities (0-18 years of age) to assess the overall situation. It also asks to systematically be provided with:

– the number of students with disabilities attending mainstream education;
– the number of those attending special school education facilities;
– the percentage of students with disabilities entering the labour market following mainstream or special education.

The Committee notes from the report that 31 Deaf Student Education Support Units (UAEASs) were established within reference mainstream schools in the public basic education and secondary education systems and that the number of deaf students rose from 682 in 2000/2001 to 958 in 2004/2005. The Committee also notes that similar specialist units within regular schools will be created for other demanding and uncommon situations. It asks the next report to inform it about progress in this regard.

The Committee reiterates that it wishes to know whether general teacher training incorporates special needs education as an integral component.

Vocational training

The Committee refers to its previous conclusion (Conclusions XVI-2), for a description of the various forms of training available and projects underway (e.g. the organisation of vocational training and certification for persons with disabilities as well as the network of resource centres), noting that these continued during the reference period. It asks the next report to demonstrate the impact of such projects by indicating whether more persons with disabilities were trained and whether the percentage of persons with disabilities entering the labour market following mainstream or special training increased.

In this regard, the Committee recalls that it requests to systematically be provided also with:

– the number of persons with disabilities attending mainstream vocational training;
– the number of those attending special training facilities;
– the percentage of persons with disabilities entering the labour market following mainstream or special training.

Meanwhile, the Committee notes from the report that the number of persons with disabilities undergoing pre-occupational preparation (245 in 2005 and 268 in 2006) or benefiting from information, evaluation and vocational counselling (1,023 in 2005 and 1,034 in 2006) increased; whilst the number of persons with disabilities attending vocational training decreased (6,975 in 2005 and 6,059 in 2006). The report explains that the latter decrease is related to the extension of compulsory schooling, which has increased the number of years that disabled persons spend in the education system.

As regards higher education, the Committee noted in its previous conclusion (Conclusions XVI-2), that a certain number of places is reserved for persons with physical and sensory disabilities. The Committee notes from the report that the number of students with disabilities benefiting from this system has increased (187 in 2003/2004 and 207 in 2004/2005). The Committee asks the next report to clarify whether the offer corresponds to the demand and whether persons with intellectual disabilities may also benefit from the above mentioned quota system.

Conclusion

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

Paragraph 2 – Employment of persons with disabilities

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

The report indicates that, in 2001, 153,306 persons with disabilities were employed, 16,272 were unemployed and 411,525 were not active. While observing that no corresponding figures were provided for the reference period (2003-2006), the Committee finds the number of inactive persons with disabilities very high. It takes note (see below) of the various measures adopted during the reference

period to promote the employment of persons with disabilities and will assess their impact to improve the situation during the next reporting cycle.

The Committee also observes that the following key figures were not provided:

- the total number of disabled persons in working age;
- the total number of persons with disabilities employed in the ordinary market as well as that of those employed in sheltered employment;
- the rate of progression of persons with disabilities from sheltered employment to the ordinary labour market.

To effectively assess the situation with regard to Article 15§2, the Committee must systematically be informed of such numbers. It therefore underlines that if the next report does not bring the requested information, nothing will demonstrate that the situation is in conformity with Article 15§2.

Definition of disability

The Committee notes from the report that the Labour Code (see below) contains provisions on persons with disabilities and persons with limited working capacity. The Committee refers to its conclusion under Article 15§1 as concerns the definition of persons with disabilities as contained in Article 2 of Law 38/2004 on the Prevention, Habilitation, Rehabilitation and Participation of Persons with Disabilities. It asks the next report to clarify the notion of persons with limited working capacity.

Anti-discrimination legislation

The Committee recalls that in its previous conclusion (Conclusions XVI-2), it had found the situation not to be in conformity with Article 15§2 because of the lack of specific legislation protecting persons with disabilities from discrimination in the field of employment.

In this regard, the Committee reiterates that under Article 15§2 non-discrimination legislation must provide for the adjustment of working conditions (reasonable accommodation) in order to guarantee the effectiveness of non-discrimination legislation in the field of

employment and confer an effective remedy on those who are found to have been unlawfully discriminated.

The Committee notes that during the reference period the following were adopted :

– Laws 99/2003 and 35/2004 (transposing *inter alia* Directive 78/2000/78/EC in the Labour Code), which provide for equality and non-discrimination of persons with disabilities and persons with limited working capacity with respect to access to employment and working conditions. As regards persons with limited working capacity, the Labour Code specifies that the employer must provide for the adjustment of working conditions (reasonable accommodation).
– Law 37/2004, which grants associations representing persons with disabilities the right to participate in the economic and social Council (relevant consultative body in the field of economic and social policies);
– Law 38/2004 on the Prevention, Habilitation, Rehabilitation and Participation of Persons with Disabilities, which sets the general legal framework to achieve the integration of persons with disabilities, reaffirming, *inter alia* their equal opportunities with respect to work;
– Law 46/2006, which explicitly prohibits direct and indirect discrimination on the basis of disability and provides that any person or body that practises acts which lead to the breach of any fundamental right or to the denial or imposition of conditions on the exercise of any other right as the result of any disability, shall be punished.

The Committee asks the next report to clarify whether the prohibition of discrimination on the basis of disability applies to recruitment, promotion, pay and dismissal. Moreover, to assess whether the right to non-discrimination in employment is effectively guaranteed for persons with disabilities, the Committee asks the next report also to clarify whether there is an obligation for the employer to adjust working conditions (reasonable accommodation) with regard to persons with disabilities and not only with respect to persons with limited working capacity. In this context, it also asks the next report to indicate:

– how such reasonable accommodation obligation is implemented in practice;

– whether there is case law on the issue and whether reasonable accommodation has prompted an increase in employment of persons with disabilities in the open labour market;
– what remedies are available for those who have been subject to discriminatory measures, including dismissal.

The Committee also requests the next report to inform it about the implementation in practice of the above mentioned new legal framework and whether it contributes to the increase of the employment rate of persons with disabilities.

Measures to promote employment

The Committee refers to its previous conclusion (Conclusions XVI-2), for a description of the different measures available to promote the employment of persons with disabilities.

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

The Committee notes that the above mentioned Law 38/2004 establishes that, depending on their size, enterprises, must recruit a certain number of persons with disabilities (these should represent up to 2% of the total number of workers of the enterprise). The report informs that a similar quota may also be imposed for other entities, under conditions to be determined. The Committee recalls from its previous conclusion that in 2001 legislation had already instituted a system of quotas in the public sector, according to which, in public competitions for the recruitment of civil servants a certain percentage of posts was to be reserved for persons with disabilities (at least 5%).

The Committee asks what percentage of enterprises, institutions and organisations achieve the quota required by Law and what sanctions, if any, are provided for those who do not. It also asks

whether employees employed under the above mentioned schemes are subject to the usual terms and conditions of employment including pay.

The report indicates that the number of persons with disabilities registered as applicants for employment increased from 5,837 in 2003 to 7,257 in 2006 and that the total number of placements of persons with disabilities in the labour market was of 1,043 in 2003 and 1,544 in 2006. The report acknowledges that the situation should improve and highlights that the following specific initiatives were taken to this end:

– enhancement of the existing network of resource centres assisting the employment centres in placing persons with disabilities in employment as well as further assistance also provided by private non profit bodies financed by the Institute of Employment and Vocational Training (IEFP);
– development of post-placement support measures;
– adoption by the Ministries of Labour and Social Solidarity, and Health of the orders setting the amounts to be allocated and the procedures to be followed by the relevant bodies that provide and/or finance technical assistance for persons with disabilities.

Moreover, the Committee takes note of the adoption of:

– the national employment plan 2003-2006 (Council of Ministers Resolution 185/2003), which contains measures for the promotion of the insertion in the labour market of persons with disabilities, particularly as regards their effective access to employment;
– the national action plan (Council of Ministers Resolution 192/2003), which also contains among its objectives the socio-professional integration of persons with disabilities *inter alia* by facilitating their use of information and communication technologies as a means to increase their participation in the field of employment and to prevent social exclusion.

The Committee asks the next report to provide an account of the impact of the above mentioned specific initiatives and national plans on the employment of persons with disabilities.

In reply to the Committee, the report informs that persons working in sheltered employment must be paid at least the national minimum salary for the sector of activity. It also states that trade unions are active in sheltered employment.

According to the report, most persons with disabilities working in sheltered employment are mentally disabled persons who, due to their disability, cannot be integrated in the open labour market. The Committee reiterates that sheltered employment facilities should aim nonetheless to assist their beneficiaries to enter the open labour market and therefore asks the next report to indicate the measures introduced to enable the integration of persons with disabilities into the ordinary labour market and the rate of progress into it.

Conclusion

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

Paragraph 3 – Integration and participation of persons with disabilities in the life of the community

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

Anti-discrimination legislation and integrated approach

The Committee recalls that the right of persons with disabilities to social integration provided for by Article 15§3 implies that barriers to communication and mobility be removed in order to enable access to transport (land, rail sea and air), housing (public, social and private), cultural activities and leisure (social and sporting activities). For this purpose Article 15§3 requires:

– the existence of comprehensive non-discrimination legislation covering both the public and private sphere in fields such as housing, transport, telecommunications and cultural and leisure activities and effective remedies for those who have been unlawfully treated;
– the adoption of a coherent policy on disabilities: positive action measures to achieve the goals of social integration and full

participation of persons with disabilities. Such measures should have a clear legal basis and be coordinated.

The Committee notes that Act 38/2004 to improve the status and participation of disabled persons promotes equal opportunities so that those concerned can enjoy the right conditions for their full involvement in society, and the removal of barriers and adoption of measures to facilitate their full participation. It asks for the next report to indicate whether this legislation bans discrimination based on disability in the areas that come within the scope of Article 15§3 and provide information on any relevant case-law covering questions such as housing, transport, telecommunications and cultural and recreational activities for persons with disabilities.

Section 9 of Act 38/2004 makes it a right and a duty for disabled persons to participate in the planning, development and monitoring of preventive policies and ones concerned with their empowerment, rehabilitation and participation.

Consultation

Organisations representing persons with disabilities sit on the national council for the rehabilitation and integration of disabled persons (CNRIPD), a consultative body of the ministry of labour and social solidarity, where they exercise their right of participation.

Forms of financial aid to increase the autonomy of persons with disabilities

The action plan for the integration of disabled or impaired persons (PAIPDI) of 31 August 2006, which is in force until 2009, identifies various measures and activities concerned with rehabilitating disabled persons, and their integration and participation in society. It has an overall budget of about € 321 million from the different ministries concerned. Various forms of financial assistance are available, such as the third person allowance and the supplementary family allowance for those requiring special personal, educational and/or therapeutic assistance or who need to attend or enter rehabilitation establishments. Families who care for disabled children or parents are entitled to a 50% reduction in taxes.

The Committee asks for detailed information in the next report on the benefits and other forms of financial assistance to which persons with disabilities may be entitled.

Measures to overcome obstacles

Technical aids

The Committee refers to its statement of interpretation on Article 15§3 in the General Introduction to these conclusions.

It asks whether persons with disabilities are entitled to free technical aids or must contribute themselves to the cost. If an individual contribution is required, the Committee asks whether the state provides some financial contribution to the cost of obtaining technical aids. It also asks whether disabled persons are entitled to free support services, such as personal assistance or home help, when required, or have to meet some of the cost of such measures. The Committee finally asks whether mechanisms are in place to assess the barriers to communication and mobility faced by individual persons with disabilities and to identify the technical aids and support measures that may be required to assist them in overcoming these barriers.

Communication

According to the report, the use of sign language, as a form of cultural expression and a means of access to education, is one of the rights embodied in the constitution. Moreover, the Television Act, no. 32/2003, makes it an obligation for the public television service to guarantee access to all viewers. The Portuguese broadcasting service, RTP, offers sub-titles, using teletext, to assist the deaf and hard-of-hearing.

Council of Ministers resolution 110/2003 of August 2003 instituted a national programme for disabled persons' participation in the information society. Section 91 of the Information Act, no 5/2004, establishes the rules governing computer networks and communication services and the powers of the national regulatory authority, including special measures to assist disabled users.

Mobility and transport

The 2003-2005 national inclusion plan includes measures to improve access to and unassisted movement in public buildings and thoroughfares and public transport.

Directive 2001/85/EC, which includes technical prescriptions to allow accessibility for persons of reduced mobility to vehicles with more than eight seats, has been transposed into Portuguese law by legislative decree 58/2004 of March 2004. This lays down suitable means of ensuring access to wheelchair users.

Persons with disabilities are entitled to reduced-price tickets on trains and free tickets are available for persons accompanying disabled persons with 80% or more incapacity. Persons with between 60 and 80% incapacity are entitled to a reduction on the price of their tickets. The Portuguese railway company has taken steps to improve access to travellers.

The Committee asks what is done to guarantee access to public transport by air and sea.

Housing

Legislative decree 163/2006 specifies conditions governing access to public buildings and establishments, public thoroughfares and residential buildings. It lays down basic technical standards to eliminate architectural barriers to mobility in public buildings and other facilities and on the public highway. Mobility must be unrestricted in both public and private areas, including access to dwellings and movement within them. Various arrangements have been introduced to make sure that new buildings comply with current regulations and standards. The Committee asks what these arrangements are.

It also asks for information in the next report on grants available to individual people with disabilities for home renovation work, lift installation and the removal of barriers to mobility, the number of beneficiaries of such grants and the general progress made on improving access to housing.

Culture and leisure

The culture and leisure programme of the 2003-2005 national inclusion plan supports projects concerned with developing sporting,

recreational and cultural activities for disabled persons and their families. The Portuguese Museums Act, no. 47/2004, entitles visitors with special needs, particularly persons with disabilities, to receive special assistance.

Conclusion

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

Article 18 — Right to engage in a gainful occupation in the territory of other parties

Paragraph 1 — Applying regulations in a spirit of liberality

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

Foreign population and migratory movements

The Committee notes from the report that in 2005, 88,217 European foreigners were residing in Portugal, including 77,504 nationals of EU member countries and 9,311 nationals of other European countries, chiefly Bulgaria (819), Romania (1,531), Moldova (1,332), Ukraine (1,969) and Russia (1,321).

Work permits

The Committee notes that apart from nationals of States Parties to the Agreement on the European Economic Area, foreigners wishing to engage in a paid occupation on Portuguese territory must have a work visa or a residence visa. The work visa entitles the holder to enter Portuguese territory lawfully in order to engage temporarily in a paid occupation, whether as an employee or as a self-employed person. The visa is issued initially for a year and may be extended up to a maximum of three years. The residence visa entitles the holder not only to lawfully enter the territory, but also to apply for a residence permit, which includes the right to work. Foreign nationals who intend to pursue an occupation for more than two years must in principle apply for the residence visa.

The Committee notes from another source[1] that the transitional period concerning workers from the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia ceased to have effect on 1 May 2006 so that the barriers restricting the right of entry for employment purposes of nationals from those countries have therefore been lifted.

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[1]. www.europa.eu.int/eures

Relevant statistics

The Committee points out that assessment of the degree of liberality used in applying existing regulations is based on figures showing the refusal rates for work permits for first-time as well as renewal applications with respect to nationals of States Parties (Conclusions XVII-2, Spain).

In its previous conclusions under Article 18§1, the Committee noted that no such data was provided, but considered that the existing regulations were applied in a spirit of liberality in view of the generally increasing rate of legal immigration. It nevertheless insisted that the relevant statistics should be supplied.

The present report does not supply any data on applications for work or residence permits as well as on the number of residence permits granted or refused. In the absence of any other data enabling it to assess the situation, the Committee cannot but defer its conclusion.

Conclusion

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

Paragraph 2 — Simplifying formalities and reducing dues and taxes

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

Administrative formalities

Issuing of work permits/work and residence permits

In its previous conclusions on Article 18§2, the Committee took note of the entry into force of Legislative Decree No. 34/2003 of 25 February 2003 and asked for information on its provisions. The Committee notes that this legislative decree, like its predecessor Legislative Decree No. 4/2001 (see Conclusions XVII-2), provides for the legalisation of non-EU foreign nationals who stay on Portuguese territory and have employment contracts or offers of employment but do not have the necessary work and/or residence permits. According to the report, under this legalisation programme, the foreign workers

concerned were granted extensions of their residence permits, which entitled them to reside and pursue an occupation in Portugal. These workers were exempted from the requirement to return to their countries of origin to obtain their work permits there.

The Committee notes that during the reference period no changes were made to the administrative formalities for the issuing of work and residence permits. It points out that these two categories of permits are distinguished only by their duration, since the conditions and procedures for obtaining them are identical.

These two types of permits are granted by the Ministry of Foreign Affairs, subject to an advisory opinion of the Foreigners and Borders Department, although this opinion is not binding on the ministry. Work and residence permits for employees are subject to the prior approval of the Institute for the Development and Inspection of Working Conditions, which is, on the contrary, binding. The Committee refers to its conclusion under Article 18§3 on this issue.

Article 18§2 of the Revised Charter presupposes the possibility of completing the formalities for the necessary permits in the country of destination as well as the country of origin and of obtaining them in a single procedure (Conclusions XVII-2, Finland and Germany). On the first point, the Committee notes that Portuguese legislation does not appear to enable foreigners already on Portuguese territory to obtain the permits required in order to engage in a paid occupation. They have to obtain a work or residence permit before entering the country and taking up an occupation. Furthermore, the residence permit requires foreign workers to complete a second procedure in order to obtain a work permit. The Committee asks whether it is planned to enable foreigners who are already on Portuguese territory to obtain the required permits. It also asks whether it is planned to abolish the dual procedure for residence and work permits.

Time necessary for obtaining permits

In reply to the Committee's question, the report indicates that the average time of two months for obtaining a work or residence permit, as indicated in the previous report, takes account of all the formalities required for obtaining the permits, including the time required for obtaining the prior advisory opinion of the Foreigners and Borders Department and, where necessary, the approval of the Institute for the Development and Inspection of Working Conditions.

Chancery dues and other charges

The Committee notes that the fee required on application for a work permit has been abolished and that the charge for issuing a work permit is now 65 €, while the charge for issuing a residence permit is 80 €. The fees payable for a temporary and a permanent resident permit did not change, amounting to 100 € and 200 € respectively. Renewals of these permits are now subject to a fee of 20 €.

The Committee noted in its two previous conclusions under Article 18§2 that the sum to be paid for a permanent residence permit was high, and asked the Government what justified the payment of such a sum. On this point, the report states that the adoption of a new standard model of residence permit in compliance with Regulation EC 1030/02 resulted in an increase in the relevant fees and charges, which is said to be justified by the cost of using advanced technical standards, particularly as regards counterfeiting and forgery.

Conclusion

The Committee concludes that the situation in Portugal is in conformity with Article 18§2 of the Revised Charter.

Paragraph 3 — Liberalising regulations

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

Access to the national labour market

The Committee notes that work and residence permits for engaging in a paid occupation are granted only if a favourable opinion is given by the Institute for the Development and Inspection of Working Conditions and that this opinion is always negative if the application concerns an employment sector affected by unemployment.

Furthermore, like the new measures introduced by Legislative Decree No. 4/2001, Legislative Decree No. 34/2003 stipulates that the decision on the access of foreign workers to a paid occupation on the national labour market must take account of the vacancies available which are not filled by nationals. To this end, the Institute for Employment and Vocational Training identifies the number of jobs

already held in each occupation and assesses the implementation of the job vacancies report published by the Government (a report estimating the number of migrant workers needed to fill vacancies the following year). The Committee asks for an estimate of the number of foreign workers from non-EU States Parties to the Charter who are admitted to the national labour market under this system.

In its previous conclusions under Article 18§2, the Committee noted from another source that there were bilateral agreements with Romania and Bulgaria in order to facilitate the recruitment of workers from those countries. The report confirms this information but states that the said agreements are no longer applied, particularly because of the complex formalities they require by comparison with the ordinary legislation regulating the employment of foreigners.

Exercise of the right to employment

The Committee notes that Legislative Decree No. 34/2003 eased the conditions for obtaining a permanent residence permit. Previously, applicants for a permanent residence permit had to prove that they had resided on Portuguese territory for at least ten consecutive years. This period has been reduced to five years for nationals of countries whose official language is Portuguese and to eight years for nationals of other countries.

The Committee asks whether foreign workers holding a work or residence permit can alter their occupation and the place in which they pursue it, and if so, subject to which conditions.

Consequence of job loss

The Committee notes that job loss does not necessarily prevent renewal of a foreign worker's residence permit. Foreign workers are entitled to unemployment benefit on the same footing as nationals and can be granted a renewal of their residence permit if they are entitled to unemployment benefit or if they prove their earnings from the previous year. In reply to the Committee's question, the report states that under Portuguese legislation the period of employment required for entitlement to unemployment benefit is 24 months.

Conclusion

The Committee concludes that the situation in Portugal is in conformity with Article 18§3 of the Revised Charter.

Paragraph 4 – Rights of nationals to leave the country

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

It notes that the situation which it previously (Conclusions XVII-2) found to be in conformity with the Charter has not changed.

The Committee points out that, under Article 44 of the Portuguese Constitution, every individual enjoy freedom of movement, which includes the right to leave the country. This right is not subject to any restrictions.

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

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

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

Equal Rights

The Committee has examined the legislative framework for the right to equal treatment in previous conclusions, and therefore refers to these for an overview of the situation (Conclusions 2006, Portugal, Article 20).

In reply to the Committee's question whether there is a limit on the amount of compensation which can be awarded in cases of a discriminatory dismissal, the report states that any worker or job applicant who is the object of any discriminatory act is entitled to compensation for both physical and moral damages. The person must prove the damages and how much they amount to, but there is no predetermined limit on the amount granted (combination of Articles 26 and 483 *et seq*. of the Labour Code). The Committee considers the situation is in conformity on this point.

The Committee asks the next report to indicate what is covered in Portuguese law by the notion of "remuneration", for the purposes of applying the principle of equal pay. In this respect, it recalls that Article 20 applies to all the elements of remuneration and that the notion of remuneration in the Charter, from the standpoint of the principle of equality between the sexes, covers "basic or minimum wages or salary plus all other benefits paid directly or indirectly in cash or kind by the employer".

The legal basis for the right to equal pay is currently found in the Labour Code, which entered into force in 2003, and the Regulation Act of 2004, which develops the Code. Article 28 of the Labour Code states the principle of equal pay in a general way. The principle is further elaborated by the Regulation Act (Articles 32, 33, 37 and 39). The Committee recalls that it has come to a conclusion of non-conformity on the question of equal pay in preceding conclusions on the ground that the scope of comparison of jobs and wages for determining equality of pay did not extend outside the company directly concerned. The report indicates that it does not seem

possible to compare two or more enterprises for wage purposes because the differences in organisation of work, investment, type of business, etc., are key elements which determine workers' remuneration. The Committee however recalls that appropriate methods of comparison must be devised enabling to compare the respective values of different jobs, and that pay comparisons to determine work of equal value beyond a single employer must be possible. As there is no indication that it is possible to carry out such pay comparisons outside a given employer, the Committee reiterates its conclusion of non-conformity.

As regards collective bargaining and equal remuneration, the Committee notes from another source[1] that Article 39 of the Regulation Act deals with the question of equal pay in collective agreements, but that many agreements contain discriminatory practices or clauses as regards pay. The Committee recalls that the promotion of equal treatment of the sexes and equal opportunities for women and men by means of collective agreements is a prerequisite for the effectiveness of the rights in Article 20. It therefore asks for more information in the next report on how equal treatment for women and men is being promoted by means of collective agreements.

With respect to social security, the report indicates that the combination of Articles 13, 59 and 63 of the Constitution guarantees equal treatment for men and women in relation to social security. The Committee also notes from the above-mentioned source that as regards pensions, the gender equality principle is contained in the main piece of legislation on social security (Law No. 32/2002, of 20 December 2002, Article 8), which applies both to legal pensions and occupational pensions (The rates of women receiving pensions in 2005, according to the report, was 50.5% of invalidity pensions, 53.7% of old age pensions, 81.7% of subsistence pensions.).

Specific protection measures

The report indicates that activities which involve biological, physical or chemical agents capable of being a risk for the genetic heritage of

[1] Legal Aspects of the Gender Pay Gap, Report by the Commission's Network of legal experts in the fields of employment, social affairs and equality between men and women (2007).

either men or women employees are regulated under the Labour Code. It also provides an overview of the provisions designed to protect the health and safety of women employees that are pregnant, have recently given birth or are breast feeding. The Committee takes note of this information and recalls that it will be taken into account during its next examination of Article 8 of the Charter (right of female workers to maternity protection).

The Committee wishes to know if any occupational activities are excluded from the application of the principle of equal treatment, and if so, to indicate which are the activities concerned.

Position of women in employment and training

The Committee takes note both from the report and from another source[1] that the employment rate for women (between 15-64 years of age) increased to 62.0% in 2006 (from 58.2% in 1998). This was above the EU-27 average, which was 57.2%, and already beyond the target set out in the European Strategy for Jobs and Growth of reaching an employment rate for women of 60% by 2010 .The employment rate for men that same year was 73.9%.

Unemployment rates (women and men aged 15 and over) in Portugal in 2006 were: 9.0% for women, and 6.5% for men, which shows that women continue being more vulnerable to unemployment than men.

The share of women employees working part-time was 16.9% in 2007 while the corresponding figure for men was 8.2%.

The share of women employees with temporary contracts was 21.7% in 2006 while the rate for men was 19.5%.

The Committee also notes that the pay gap between women and men (difference between men's and women's average gross hourly earnings as a percentage of men's average gross hourly earnings) was 9% in 2006, among the lowest rates for EU-27 countries.

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[1] Eurostat, Labour Force Survey (LFS), annual averages.

Measures to promote equal opportunities

The report mentions that the action plans on employment (2005-2008) and equal treatment (2003-2006) both contain a number of measures to promote equal opportunities for men and women in the labour market, and to increase the participation of women in active life. Positive actions and the adoption of a mainstreaming approach in all fields of activity are foreseen.

The Committee recalls that Recommendation No. (2007) 17 of the Committee of Ministers to member States on gender equality standards and mechanisms, adopted on 21 November 2007, should be taken into consideration by the authorities when preparing measures and policies on equal treatment and opportunities between men and women.

Conclusion

The Committee concludes that the situation in Portugal is not in conformity with Article 20 of the Revised Charter on the ground that it is not possible to make a comparison of jobs outside the company directly concerned in unequal pay claims.

In accordance with Article 21-1§3 of the Committee's Rules of Procedure, a dissenting opinion of Mr S. Evju, member of the Committee, is appended to this conclusion.

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

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

Article 24 of the Revised Charter obliges states to establish regulations with respect to termination of employment (at the initiative of the employer) for all workers who have signed an employment contract. To assess whether the regulations applied in cases of termination of employment are in conformity with Article 24, the Committee's examination will be based on:

– the validity of the grounds for dismissal under the general rules on termination of employment and increased protection against dismissal based on certain grounds (Article 24.a and the Appendix to Article 24);
– sanctions and compensation in cases of unfair dismissal and the status of the body empowered to rule on such cases (Article 24.b).

Scope

According to the report, the rules on the termination of employment as stipulated in the Labour Code apply to all employment relationships governed by an employment contract. Pursuant to Section 136 of the Labour Code, employees working under a fixed term contract have the same rights as those employed for an indefinite period unless a different treatment is justified by objective grounds.

The Committee notes that under Portuguese law an employment contract may be subject to a probationary period of 90 days, of 180 days for employees who occupy posts requiring special qualifications or who bear particular responsibility and of 240 days for chief executives. Fixed term contracts of a duration of up to six months are subject to a probationary period of 15 days and those for a duration of over six months are subject to a probationary period of 30 days. During the probationary period the employment contract may be terminated by either party without giving the grounds for the termination and without any entitlement to compensation. In the event the probationary period has already lasted for more than 60 days, termination by the employer is only possible with a notice period of 7 days.

Obligation to provide a valid reason for termination of employment

According to the report, termination of employment is permitted under the following circumstances:

– if it is justified by a behaviour of the employee, the gravity and consequences of which render the continuation of the employment relationship impossible;
– collective redundancies;
– abolition of a post; or
– inaptitude of the employee to fulfil the requirements of the post.

A notice of dismissal has to be effectuated in writing and has to provide the grounds on which the dismissal is based.

As regards termination of the employment contract related to the capacity or the conduct of the employee, the report specifies that in order to assess whether a dismissal is justified on the ground of conduct of the employee, the gravity of the damage caused to the employer, the nature of the relationship between the employee, his employer and his colleagues and the specific circumstances of the individual case are taken into account. Concerning termination of employment due to lack of professional skills to perform the job, the report specifies that a dismissal can only be justified on this ground if there has been (i) a continued decline of productivity and quality of the employee's work or (ii) the employee has caused repeated damage to the work equipment or (iii) in the event the continuation of the employee's employment relationship creates a risk for the security and health of the employee himself, his colleagues or third parties (Sections 405 and 406 of the Labour Code). Pursuant to Section 406 para 2 of the Labour Code, termination of employment in management positions or posts of high technical complexity is permitted in the event the employee does not meet the previously agreed and formally accepted objectives of the post.

As regards the alternatives of termination of employment based on economic grounds, i.e. collective redundancies and abolition of a post, the report specifies that collective redundancies are permitted for restructuring purposes or if they are necessary to respond to changes in the market demand or the manufacturing process. Dismissal due to abolition of a post is permitted only in the event that it is practically impossible for the employer to continue the employment relationship, that the employee receives a due

compensation and that there is no employee working on a fixed term contract in a similar post who could be made redundant instead.

The Committee asks for a summary of significant case law showing how the aforementioned grounds for termination of employment are interpreted by the competent courts in practice. It asks in particular whether courts are empowered to review the facts underlying a dismissal that is based on financial or production-related grounds invoked by the employer.

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

The Committee holds that dismissal on the grounds of age will not constitute a valid reason for termination of employment unless a termination is, within the context of national law, objectively and reasonably justified by a legitimate aim such as legitimate employment policy, labour market objectives or the operational requirements of the undertaking, establishment or service and provided that the means of achieving that aim are appropriate and necessary. It wishes the next report to provide information on whether and how the legal framework complies with this approach.

Prohibited dismissals

The Committee points out that a series of provisions in the Charter and Revised Charter require more rigorous safeguards against dismissal on certain grounds:

– Articles 1§2; 4 §3 and 20: discrimination;
– Article 5: trade union activity;

– Article 6§4: participation in a strike;
– Article 8§2: maternity;
– Article 15: disability;
– Article 27: family responsibilities;
– Article 28: workers' representation.

Most of these reasons are also listed in the Appendix under Article 24 as reasons which do not justify dismissal. However, the Committee will continue to check whether national situations are in conformity with the Revised Charter in regard to these reasons when it examines the reports on each of these provisions. It thus restricts its examination of more rigorous protection against dismissal to the reasons listed in the Appendix under Article 24 which are not referred to elsewhere in the Revised Charter, namely:

– "the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities". The Committee considers that national legislation should contain an express safeguard, in law or case law, which protects employees against retaliatory dismissal if they turn to the courts or another competent authority to enforce their rights;
– temporary absence from work due to illness or injury".

The Committee notes that pursuant to Section 122 of the Labour Code, the employer is prohibited from preventing his employees to exercise their rights and in particular from terminating an employment relationship as a reprisal for the exercise of such rights.

As regards temporary absence from work due to illness or injury, the report refers to Section 225 et seq of the Labour Code stipulating that any absence from work for a reason not imputable to the employee and that was notified to the employer in accordance with Section 228 of the Labour Code is considered as a justified absence in the meaning of Section 225 no. 2 para d of the Labour Code and can not be a ground for termination of the employment relationship. In the case of sick leave a corresponding medical certificate is required.

Remedies and sanctions

The Committee observes from the report that an employee may have recourse to the civil courts when he/she considers a dismissal to be unlawful.

The report states that in the event of a court proceeding regarding an unfair dismissal, the burden of proof lies in general with the employee. A shift of the burden of proof applies in cases where there is a strong presumption that a dismissal was discriminatory such as e.g. in the event of termination of the employment relationship of a pregnant employee.

The Committee holds that in proceedings regarding unfair dismissal, the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment between employee and employer. It asks the next report to specify whether Portuguese law provides for such an adjustment also in cases where there is no presumption that a dismissal has been discriminatory.

The Committee notes from the report that pursuant to Section 436 no. 1 of the Labour Code in the event of an unfair dismissal the employee shall be reinstated and the employer be liable to compensate him for any material or moral damage that occurred in the period between the unfair dismissal and the reinstatement.

In the event the employee does not have an interest to be reinstated or the court holds that reinstatement in the enterprise is impossible, he/she is entitled to a compensation the amount of which is determined by the court on the basis of the employee's basic salary by taking into account the specific circumstances of the individual case. In any event the compensation may not be less than the equivalent of three months of basic salary.

The Committee asks the next report to provide further information on the compensation an employee may claim in the event a court has held his dismissal to be unfair. It asks in particular whether in these cases compensation is subject to a ceiling.

Conclusion

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

Article 25 – Right of workers to the protection of their claims in the event of the insolvency of their employer

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

Article 25 of the Charter guarantees workers the right to the protection of their claims in the event of their employer's insolvency. States that have accepted this article have some discretion as to the form of protection they offer, so long as the protection is adequate and effective and includes situations where the employer's assets are insufficient to cover salaries owed or to justify the opening of formal insolvency proceedings (Conclusions 2003, France). To show that the protection is adequate, states must indicate the period that elapses from when claims are lodged to when payments are made and the overall proportion of workers' claims that are satisfied (Conclusions 2003, Sweden). Protection must at least extend to wages, and sums due for paid holidays and other paid absences, relating to a specific period. States may limit protection of these sums owed to a specified amount (Conclusions 2005, Estonia), so long as this is at a socially acceptable level. Certain categories of employees may, exceptionally, be excluded from Article 25 protection because of the special nature of their employment relationship. However, it is for the Committee to determine on each occasion whether the nature of the employment relationship warrants such an exclusion. At all events, under no circumstances may this be a reason for the exclusion of part-time employees and employees on fixed-term or other temporary contracts.

The Committee notes that the Act 35/2004 of 29 July 2004 defines insolvency as inability to meet liabilities that have fallen due from available assets and therefore covers the notion of cessation of payments.

Article 377 of the Labour Code establishes a general rule that employees' claims arising from the violation or cessation of employment contracts are protected by a privilege system pertaining to their employers' moveable assets and take precedence over all other claims. However, under Article 380 of the Code and Sections 316 to 326 of Act 35/2004 of 29 July 2004, the main form of protection of employees' claims in the event of their employer's insolvency is a salaries and wages guarantee fund financed from employers' contributions. Under Section 322 of the Act, responsibility

for employees' claims, including ones that are privileged under Article 377 of the Labour Code, is effectively transferred to the fund. The Committee infers that in the event of employers' insolvency employees' claims are protected by a combination of privilege and guarantee systems.

The Committee notes that the guarantee fund intervenes when an employer has been declared insolvent by the courts and conciliation proceedings have been initiated to seek an agreement between the employer and some or all of his creditors, with a view to protecting the insolvent company. The conciliation procedure may be initiated with the APMEI, an institute that offers aid and investment for small and medium-sized enterprises, by any undertaking fulfilling the conditions for applying for judicial insolvency or any creditor fulfilling the conditions for applying for a declaration of insolvency. The Committee asks whether the guarantee fund can intervene when businesses cease trading without being able to honour their commitments, but have not been formally declared insolvent.

The guarantee fund covers claims arising from employment contracts falling due in the six months preceding the date of the application for a declaration of insolvency or on which the request for conciliation proceedings was lodged with the APMEI. The Committee notes that employees covered by the guarantee fund may obtain up to six times their individual monthly wage, though the latter is subject to a maximum of three times the minimum monthly wage, which is set annually.

The Committee asks what different types of claims are covered by the guarantee system – wages, amounts due for paid holidays and so on – and the relevant period for each type of claim protected. It also asks for an estimate of the overall percentage of employees' claims that are met by the guarantee fund and the average time that elapses between the filing of claims and the payment of any sums owed.

The Committee notes that no category of employees is excluded from the wage guarantee system. All employees with an employment contract are protected. However, there are special arrangements for persons working for public corporations and state enterprises, and for insurance companies and credit, financial and investment institutions providing services that entail the holding of funds or securities belonging to private individuals and collective investment

undertakings. The Committee asks what is the framework for these special arrangements.

Conclusion

The Committee concludes that the situation in Portugal is in conformity with Article 25 of the Revised Charter.

Dissenting opinion of Mr S. Evju

Conclusion relating to Article 20

Just like it did in Conclusions XVI-2 (2003) under Article 4§3 and in Conclusions 2006 under Article 20 the Committee again has reached a conclusion of non-conformity on the ground that under Portuguese law the scope of the comparison of wages for determining equality or equal value of jobs is limited to the same enterprise. On this point I dissent.

The construction of Article 20 (and Article 4§3) on which the Committee rests is one that has been arrived at gradually, stumblingly and via a plethora of inconsistency, from a mere suggestion in Conclusions XIII-1 through several later conclusions in various forms. Be that as it may, the conclusion arrived at is neither solidly founded nor a readily comprehensible requirement.

Article 20 entails an obligation on States to "take appropriate measures to ensure or promote" "the right to equal opportunities and equal treatment". Pay, "remuneration", is merely mentioned as one element of "terms of employment and working conditions". The particular conception underlying the Committee's stance is a transference of the obligation under Article 4§3 to recognize "the right of men and women workers to equal pay for work of equal value".

This begs the question what is "equal *value*", that is, value *for whom* – for the worker, for an employer, according to some societal standard and in that case which, defined by whom, etc.? Unfortunately, no straightforward and operative answer is provided to this question. That is problematic also because obviously, there is an immediate connection between this and the issue of comparison as regards what is "*equal pay*".

Employing the concept of "enterprise" in insisting on the possibility of "outside" comparison is unfortunate in that the very concept is fuzzy. It is not legally defined and its extension is not clear and may differ with varying contexts. This is the case with the concept of "enterprise" in several domestic jurisdictions (e.g., in French law) and also as the Charter and Articles 4§3 and 20 are concerned. The Committee has expressed itself in several different forms of wording, to the effect that domestic legislation must authorize the extension of

comparisons of pay and jobs "to other enterprises", "outside the enterprise", "outside the company directly concerned", or "beyond a single employer", occasionally but not systematically with the rider "where this is necessary for an appropriate comparison". The occasional use in Committee conclusions of terms like "company" or "employer" may portend certain conceptions but case law does not provide operative responses to how the intended "outside " comparison must reach and where it may stop.

In this context it is of the essence to clarify who is the obligated subject pursuant to Article 4§3 or Article 20. In previous dissenting opinion I have pointed out that it is a fundamental difference between comparing average wages of women and men in society, at the aggregate level across all branches of the economy, and comparing wages at a given workplace, within a local authority (municipality, *Kommune*) or within state civil service, controlling for factors like education, age, years of service, etc. What is "equal" and what is "value" by force take on different meaning in different contexts. If what is at issue is seeking to provide an individual right for a worker as a vehicle to establish a legal entitlement to being paid by her or his employer, that amounts in effect to impose an obligation on an employer to pay its employees not on the basis of wages and wage differences within its own workforce but based on what some other employer(s) somewhere else in the economy is paying its workers. I find that to be an untenable position as regards the construction of the provision of Article 4§3 and Article 20 of the Charter. It cannot reasonably be presumed that by virtue of provisions like these an employer is obligated to pay its employees on the basis of comparison with employees of other employers. I refrain from elaborating on this point, which I have addressed more comprehensively in previous dissenting opinions

Further, it remains foggy, at best, when according to the Committee's standard it must be deemed "necessary for an appropriate comparison" to have recourse to some form of "external" pay comparison. Arguably, one might hold that there may be a segregated labour market so that there may be a workplace where there is no one of the other sex to compare oneself with. To be able to see "discrimination" one will then have to be able to look outside. This is, however, little more than a pure postulate taking no account of the different issues of obligated individuals, the applicable concept of equal/unequal, and assessment criteria that I have pointed to

above. And here, problems abound. I maintain my view that the position adopted by the Committee's majority is ill-advised.

Chapter 20 – Conclusions concerning Articles 1, 9, 15, 18, 20, 24 and 25 of the Revised Charter in respect of Romania

Introduction

The function of the European Committee of Social Rights is to assess the conformity of national law and practice with the European Social Charter and the Revised Charter. In respect of national reports, it adopts "conclusions" and in respect of collective complaints, it adopts "decisions".

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

The Revised European Social Charter was ratified by Romania on 7 May 1999. The time limit for submitting the 7th report on the application of the Revised Charter to the Council of Europe was 31 October 2007 and Romania submitted it on 13 February 2008. Supplementary information was submitted on 14 October 2008.

This report was the first under the new system for the submission of reports adopted by the Committee of Ministers.[2] It concerned the accepted provisions of the following articles belonging to the first thematic group "Employment, training and equal opportunities":

– the right to work (Article 1),
– the right to vocational guidance (Article 9),
– the right to vocational training (Article 10),
– the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
– the right to engage in a gainful occupation in the territory of other States Parties (Article 18),

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[1] The conclusions as well as state reports can be consulted on the Council of Europe's Internet site (www.coe.int) under Human Rights and Legal Affairs.

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

– the right of men and women to equal opportunities (Article 20),
– the right to protection in cases of termination of employment (Article 24),
– right of workers to the protection of claims in the event of insolvency of the employer (Article 25).

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

The applicable reference periods were:

– 1 January 2003 – 31 December 2006 for Article 18;
– 1 January 2005 – 31 December 2006 for Articles 1, 9, 15, 20, 24 and 25.

The present chapter on Romania concerns 12 situations and contains:

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

In respect of the 3 other situations concerning Articles 15§2, 24 and 25, the Committee needs further information. The Government is therefore invited to provide this information in the next report on the articles/provisions in question.

The next Romanian report deals with the accepted provisions of the following articles belonging to the second thematic group “Health, social security and social protection”:

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

The deadline for the report was 31 October 2008.

Article 1 — Right to work

Paragraph 1 – Policy of full employment

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

Employment situation

The Committee notes from Eurostat that growth in Romania was strong during the reference period (7.7% in 2006). In 2004, this growth was 8.5%.

Employment resumed its upward trend during the reference period, rising from 57.5% in 2004 to 58.8% in 2006. The Committee notes, however, that the employment rate for men is higher (64.6% in 2006) than for women (53% in 2006). It further observes that the overall employment rate and the employment rate for women are both still lower than the EU-15 average (66.2% and 58.7% respectively in 2006).

All the indicators relating to unemployment fell during the reference period. Unemployment fell from 8.1% in 2004 to 7.3% in 2006 while female unemployment fell from 6.9% in 2004 to 6.1% in 2006 and youth unemployment (persons aged 15-24) saw a smaller decline, from 21.9% in 2004 to 21.4% in 2006. The Committee notes that the youth unemployment rate is higher than the EU-15 average (15.7% in 2006).

It further notes that long-term unemployment expressed as a percentage of total unemployment has continued to decline, falling from 58.9% in 2004 to 57.8% in 2006, but is still higher than the EU-15 average (42.1% in 2006).

According to the report, 16,225 people with disabilities were employed in Romania in 2006. A total of 5,521 unemployed people with disabilities were also registered in the public employment services.

Employment policy

The report describes in detail the various active measures taken to help the unemployed under the national employment programme.

The Committee notes that a number of schemes are targeted more specifically at older unemployed persons.

In the case of both young and adult unemployed, improving access to training was a priority. Job creation, including the creation of temporary posts in the public sector, likewise features among the measures taken to activate the unemployed. Other initiatives aim to provide a financial incentive for employers to hire job-seekers, and to develop continuing vocational training for their staff, notably through a reduction in companies' social charges.

Special attention has also been given to the employment of the most disadvantaged groups, in particular those working in economically depressed regions. Three different programmes, *Program 180*, *Program for Valea Jiului* and *Program for Danube Delta*, launched in 2005, have helped to find jobs for 54,980 unemployed people in total (48,825 in 2006).

Other measures are aimed more specifically at young graduates, one notable example being the creation of subsidised employment. In 2006, some 16,414 young people benefited from measures of this kind.

The report states that, under the national programme for employment, 509,127 jobs were created in 2006 (compared with 507,363 in 2005). The Committee once again asks that the next report provide information on the activation rate. It also repeats its request for information on the average time before an unemployed person is offered participation in an active measure.

According to the report, in 2006 a total of 46,681 people (105,308 people in 2005) received vocational guidance advice or information through local employment agencies. In 2005, 42,996 people received training, including 4,940 long-term unemployed.

The Committee requests information on specific initiatives to promote employment among immigrants and minorities.

It notes from Eurostat that total expenditure on employment policy (active and passive measures combined) fell from 0.6% of GDP in 2004 to 0.4% of GDP in 2006 (the EU-15 average was 2% in 2006). Spending on active measures remained stable and represented 0.1% of GDP in 2006, whereas the UE-15 average was 0.5% in 2006. The Committee notes that these amounts are significantly

lower than the EU-15 average. It wishes to know whether it is planned to increase these amounts, particularly in view of the problem of long-term unemployment.

The Committee previously (Conclusions 2006) held that the policy measures to address the high long-term unemployment rate as well as the rising youth unemployment rate are inadequate. It considers that the situation is still not in conformity with Article 1§1 of the Revised Charter.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 1§1 of the Revised Charter on the ground that the measures taken to remedy long-term unemployment and youth unemployment are inadequate for achieving substantial improvement of the situation.

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

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

1. Prohibition of discrimination in employment

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

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

Legislation must cover both direct and indirect discrimination (Conclusions XVIII-1, Austria). With regard to indirect discrimination, the Committee points out that Article E of the Revised Charter prohibits "all forms of indirect discrimination" and that "such indirect discrimination may arise by failing to take due and positive account

of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all" (Collective Complaint No. 13/2002 Autism-Europe v. France,, decision on the merits of 4 November 2003, §52).

Act No. 324 of 2006 on the prevention and punishment of all forms of discrimination prohibits all forms of direct discrimination on grounds of race, nationality, ethnic origin, language, religion, social background, belief, sex, sexual orientation, age, disability, non-infectious chronic diseases, contamination with AIDS, membership of a disadvantaged group or any other criterion.

In the Act, indirect discrimination is defined as seemingly impartial measures, criteria or practices which put certain people at a disadvantage in relation to others on the basis of one of the grounds listed in the definition of direct discrimination, except where these measures, criteria or practices are objectively justified by a legitimate aim and the means deployed to achieve this aim are appropriate and necessary.

As there is no information on the subject in the report, the Committee asks again how the notion of discrimination on the ground of age is interpreted.

The Committee refers to its previous conclusion for a description of the functioning of the National Council for the Prevention of Discrimination.

In disputes relating to an allegation of discrimination in matters covered by the Charter, the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment. The Committee notes that under Act No. 324 of 2006 complainants must simply prove the facts of the case from which it can be presumed that there was discrimination. It is then for the defendant to prove that these facts did not constitute discrimination.

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

loss or damage incurred and not sufficiently dissuasive for the employer. The Committee notes that under Act No. 324 of 2006, there is no upper limit on compensation in cases of discrimination. The amount of compensation to be awarded is determined by the courts.

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

In its previous conclusions the Committee noted that, under the relevant legislation, foreigners were entitled to the same treatment as nationals with regard to access to the labour market provided that the activity to be carried out did not involve the exercise of public authority. It requested further information on activities from which foreigners are banned because they involve the exercise of public authority. Since the current report does not contain this information, the Committee repeats its request.

2. Prohibition of forced or compulsory labour

Prison work

Under Article 53^3 of the Criminal Code, convicted prisoners may be asked to work with their consent. According to the report prisoners may not be forced to work for a private company or a public body, either inside or outside prison. Act No. 275/2006 on the enforcement of sentences and orders issued by the judicial authorities during criminal proceedings sets out *inter alia* the rules that apply in prison.

All work is paid except maintenance work on the prison premises and work carried out in response to natural disasters. Maintenance

work includes work in the kitchen, cleaning work, maintenance of equipment, and work in maintenance workshops (including shoe and clothes making, car repair work, tinsmithing and locksmithing).

The prison authorities may negotiate labour agreements with private companies which are prepared to employ prisoners. Prisoners do not have employee status but their pay may not be lower than the minimum wage. Wages are paid to the prison authorities, which then passes on 30% to the prisoners.

Prison work is covered by ordinary labour law. Prisoners who are incapacitated for work as the result of an accident or illness are entitled to invalidity pension. Working hours are restricted to eight hours a day and 40 hours a week. They may be increased to 10 hours a day and 50 hours a week with the prisoner's written consent. Night work may only be carried out with the prisoner's written consent and is restricted to seven hours per night and 35 hours a week. Prisoners are entitled to at least one day of rest per week.

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

Privacy at work

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

Restrictions linked to the fight against terrorism

According to the report there is no legislation which allows discrimination in order to protect national security either for preventing or for combating terrorism.

Service required to replace military service

In its previous conclusions, the Committee found that the situation was not in conformity because alternative service lasted 24 months instead of 12 and this was excessive. It took the view that the additional 12 months during which the persons concerned were

deprived of the right to earn a living through freely undertaken work went beyond reasonable limits in relation to the length of military service.

The Committee notes that, under Act No. 446/2006, which came into force on 1 January 2007, the length of alternative service is now to be set by a Government decision. According to the report, it is planned to set this at twelve months.

Admittedly, recognised conscientious objectors are in a better position than they are in countries that do not grant them special status or where refusal to serve is punishable by imprisonment. But even if the state acknowledges the principle of conscientious objection and institutes a replacement service, it cannot make the replacement service longer than is necessary to ensure that refusal to serve on grounds of conscience is genuine, in order to avoid the replacement service being chosen as the most advantageous solution rather than felt as a constraint.

The Committee considers that, this reform will enable Romania to be in conformity with Article 1§2 of the Revised Charter on this point. However, the situation was not in conformity with the Revised Charter during the reference period. It asks, however, for the next report to indicate when the law has come into force.

Part-time work

In its previous conclusions the Committee asked for information on the legal safeguards attached to part-time work, in particular whether there was a minimum working week and whether there were rules to avoid undeclared work in the context of overtime and ones requiring equal pay, in all its aspects, between part-time and full-time workers. Since the current report does not contain this information, the Committee repeats its request.

Conclusion

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

Paragraph 3 – Free placement services

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

The Committee notes that a new law on the organisation and functioning of the National Agency for Employment has redefined the framework of its activities in order to reinforce its institutional capacity and give it the means of better implementing active and passive labour market measures.

According to the report, the annual number of vacancies notified to the employment services increased from 42,357 in 2005 to 47,501 in 2006. The Committee notes that these figures do not match with those provided by Eurostat (80,557 for 2006 and 73,380 for 2006). According to the report, the total number of unemployed persons registered with the National Agency for Employment declined from 598,094 in 2005 to 518,037 in 2006.

At the same time, the report indicates a placement rate of 50.2% in 2006, i.e. a lower figure than that for 2005 (58.2%).

A total of 46,681 people also benefited in 2006 (105,308 in 2005) from career guidance advice or information through local employment offices.

In spite of repeated requests from the Committee, no information about the geographical coverage of the public employment services (number of offices and their distribution, number of staff and their qualifications, etc) is provided by the report.

Furthermore, no information about the share of the market represented by the public employment services (i.e. the number of placements made by the public employment services as a proportion of total labour market recruitment) appears in the report.

The Committee notes that both sides of industry play a part, at national level, in the management of the Employment Agency, within a board comprising representatives of employers' and workers' organisations, thus playing an active part in the definition and implementation of the national employment strategy. This "tripartite" co-operation is also the rule at regional and local levels.

The Committee previously (Conclusions 2006) asked for additional information on the total expenditure on public employment services (i.e. placement services, training programmes for the National Agency for Employment) as a percentage of GDP. In absence of any reply, it reiterates its question.

The Committee previously (Conclusions 2006) indicated that the Government had not provided the information enabling it to assess whether the right to free placement services was guaranteed.

It considers that the information provided by the current report is not sufficient and that the situation is still not in conformity with Article 1§3 of the Revised Charter.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 1§3 of the Revised Charter because it has not been established that the right to free employment services is guaranteed.

Paragraph 4 – Vocational guidance, training and rehabilitation

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

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

As Romania has accepted Articles 9 (right to vocational guidance) and 15§1 (right of persons with disabilities to vocational guidance, education and training) of the Revised Charter, the Committee refers to its findings under these articles. It found the situation to be in conformity with the Revised Charter under Article 9. However, it found the situation not to be in conformity with the Revised Charter under Article 15§1 on the ground that mainstreaming of persons with disabilities is not effectively guaranteed in the field of education and training as the number of children with disabilities attending special education is high and a considerable number of children with disabilities is left without education.

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

The Committee refers to its last conclusions (Conclusions 2003 and 2007, Romania) for a general description of the continuing vocational training system.

In 2006, the main concern of the national employment agency was continuing vocational training for unemployed persons. A national vocational training action plan anticipated the inclusion of at least 50,000 persons in training programmes.

In 2006, 2,422 training programmes took place, of which 2,190 were for registered unemployed persons and 79 for prisoners, 121 were organised by employers for their staff and 32 programmes were for persons receiving free vocational training services. The 2,422 programmes were financed from the unemployment insurance budget and were organised either by the regional vocational training centres or by county employment agencies.

A total of about 1.25 million persons were registered as unemployed on the national employment agency register in 2006 and 46,681 persons, of whom 42,565 were unemployed, took part in training programmes. The report also states that these recipients of training included 20,478 persons in rural areas. The Committee asks what steps are being taken to raise the low level of participation of unemployed persons in continuing vocational training.

Equal access to continuing vocational training is a universal entitlement, including citizens of other States Parties living and working in Romania.

Conclusion

The Committee concludes that the situation is not in conformity with Article 1§4 of the Revised Charter on the ground that mainstreaming of persons with disabilities is not effectively guaranteed in the field of education and training as the number of children with disabilities attending special education is high and a considerable number of children with disabilities is left without education.

Article 9 – Right to vocational guidance

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

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

Vocational guidance within the education system

a. Functions, organisation and operation

At primary and secondary schools, vocational guidance is provided by teachers in the form of classes, meetings with parents, individual programmes and work experience placements. In higher education, each university institution organises its own activities (meetings, presentations on career opportunities, publication of brochures). Guidance services in the education system are public, free of charge and equally available to everyone.

b. Expenditure, staffing and number of beneficiaries

Teachers have specialised training in education, psychology and sociology in order to be able to teach vocational guidance classes. There were 2000 during the reference period.

According to the report, there is no information available about the budget allocated to guidance in the education system. With regard to the number of beneficiaries, the report states that all pupils and students taking part in the education system are entitled to vocational guidance services. The Committee asks for the next report to provide detailed information on expenditure and the number of beneficiaries.

Vocational guidance in the labour market

a. Functions, organisation and operation

Guidance services are provided through specialised centres forming part of employment offices and through public- or private-sector bodies which have negotiated contracts with employment offices in accordance with the law. These services are provided free of charge to jobseekers and workers wishing to train for a new job. In reply to

the Committee, the report states that guidance counsellors must have specific qualifications, namely a university degree in psychology, sociology, education, social assistance or another education-related subject.

b. Expenditure, staffing and number of beneficiaries

During the reference period, 208 people were employed by employment offices to offer vocational guidance. In 2005, there were 111,045 beneficiaries, 52,007 of whom were women, and in 2006, there were 126,121 beneficiaries, 56,368 of whom were women.

According to the report, there is no detailed budget available for all the employment offices' vocational guidance activities. The Committee asks for the next report to provide detailed information on the budget.

Dissemination of information

As part of a project entitled "Careers information and counselling", launched in 2004, an Internet portal was set up. It provides information and an on-line advice service.

Equal treatment of nationals of the other States Parties

The Committee noted previously (Conclusions 2003) that nationals of other States Parties residing or working lawfully in Romania had the same rights of access to vocational guidance as Romanian nationals. In reply to the Committee's question, the report states that under section 16 of the Unemployment Insurance Act (No. 76/2002), all foreign citizens or stateless persons employed in Romania are entitled to vocational guidance services.

Conclusion

The Committee concludes that the situation in Romania is in conformity with Article 9 of the Revised Charter.

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

The Committee takes note of the information provided in Romania's report as well as in the additional information submitted on 14 October 2008.

The Committee notes from the report that in 2006, there were 488,054 persons with disabilities in Romania, of whom 55,121 were children.

Definition of Disability

In its previous conclusion, the Committee noted that the definition of persons with disabilities retained in the National Strategy on equal opportunities for people with disabilities was in line with the 2001 International Classification of Functioning and Health definition endorsed by the WHO.

Anti-discrimination legislation

In its previous conclusion (Conclusions 2007), the Committee considered that there was no effective non-discrimination legislation in relation to disability in education.

The Committee notes the adoption in December 2006 of Law 448/2006 on the protection and promotion of the rights of persons with disabilities which is based, *inter alia*, on the principles of equal opportunities and non discrimination. The new Law provides for equal and free access to any form of education and training for persons with disabilities and lists a series of measures to achieve such goal. The Committee asks the next report to provide information on the impact in practice of this Law in terms of increased mainstreaming of pupils and students with disabilities.

The Committee also asks for information on the right of individuals to seek remedies before the courts in cases of discrimination on the ground of disability in education and training.

Education

The Committee recalls that, in its previous conclusions (Conclusions 2003 and 2007), it found the situation not to be in conformity with

Article 15§1 of the Revised Charter, *inter alia,* on the ground that the number of children with disabilities in special schools was high. The Committee had therefore asked what measures were taken to increase mainstreaming education.

The Committee takes note of the adoption, in October 2005, of a National Strategy on the social protection, integration and inclusion of persons with disabilities for 2006-2013. According to the report this Strategy supports education at any age for persons with disabilities. From the additional information submitted, the Committee notes that following the adoption of this Strategy the number of pupils with disabilities has increased in ordinary schools from 14,193 pupils in 2005-2006 to 20,728 pupils in 2006-2007. During the same school years, the number of pupils with disabilities attending special schools decreased from 28,873 to 27,445. While noting the progress achieved, the Committee observes that the total number of pupils with disabilities in special schools is still higher than that of those in ordinary schools.

As to the high number of children with disabilities that the Committee had previously found to be left without education, the report does not comment. However, from the figures provided for 2006 (55,121 children with disabilities, out of which 43,066 in special or ordinary schools), the number of such children still remains high. The Committee therefore considers the situation not to be in conformity with Article 15§1 of the Revised Charter and asks the next report to clarify whether these children have been integrated in some form of education or training.

Vocational training

The Committee observes that no reply was provided to its previous questions concerning vocational training (Conclusions 2003 and 2007). It therefore reiterates that it wants the next report to contain:

– the number of young persons integrated into mainstream vocational training establishments or apprenticeship schools;
– the number of persons with disabilities integrated into mainstream adult facilities;
– a description of the measures taken to assist integration into mainstream facilities;

– the number of specialist vocational training facilities both for young persons and for adults and the number of persons attending them.

In the absence of this information, the Committee considers that it has not been established that mainstreaming of persons with disabilities is effectively guaranteed in the field of training.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 15§1 of the Revised Charter on the ground that mainstreaming of persons with disabilities is not effectively guaranteed in education and training as:

- the number of children with disabilities attending special education is high;
- a considerable number of children with disabilities is left without education.

Paragraph 2 – Employment of persons with disabilities

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

The report indicates that in 2006 there were 488,054 persons with disabilities in Romania, of whom 432,933 were adults and only 16,225 were employed.

The report also points out that, always in 2006, the number of disabled persons registered with agencies for employment was 5,521: 2,448 disabled persons benefited from job matching and 775 were employed thanks to the Program for Employment. Seven persons with disabilities were also employed as a result of the Job Fair for the Disabled. Furthermore, 736 persons with disabilities were employed in protected units (sheltered employment). It is not clear whether the latter figures are to be considered as included in the above mentioned total of 16 225 or are additional persons with disabilities working in 2006. The Committee asks the next report to clarify the situation while reiterating that to assess the situation it needs to know:

- the total number of persons with disabilities of working age;
- the total number of persons with disabilities employed in the ordinary market as well as that of those employed in sheltered employment;
- the rate of progression of persons with disabilities from sheltered employment to the ordinary labour market.

The Committee underlines that if the next report does not provide the requested information, nothing will demonstrate that the situation is in conformity with Article 15§2.

Non-discrimination legislation

The Committee recalls that, in its previous conclusion (Conclusions 2007), it found that the Labour Code, as amended by Law No. 53/2003, guarantees equal treatment in employment on the ground, *inter alia*, of disability. The Committee reiterates that it wants to know to which aspects of employment equal treatment applies.

Moreover, the Committee notes the adoption of Law 448/2006 on the protection and promotion of the rights of persons with disabilities. It observes that the provisions concerning the promotion of employment of persons with disabilities entered into force in 2007 (outside the reference period). The Committee will examine the implementation of this new law during the next cycle and therefore asks the next report to provide more details on its scope of application in relation to the field of employment and whether it explicitly prohibits discrimination on the basis of disability. It also wishes to be informed on the Law's impact in practice in terms of increased employment of persons with disabilities.

As to the reasonable accommodation obligation, which the Committee had found to be provided for by Government Emergency Ordinance No. 102/99 on special protection and employment of persons with disabilities, as amended by Law No. 519/2002, the Committee asked how such obligation is implemented in practice, whether there is case law on the issue and whether reasonable accommodation has prompted an increase in employment of persons with disabilities in the open labour market.

Since the above mentioned legal basis containing the reasonable accommodation obligation has been replaced by the new Law

448/2006, the Committee reiterates its questions and expects the next report to provide it with the requested information.

Measures to promote employment

The Committee refers to its previous conclusion (Conclusions 2003) for a description of the various measures to encourage employment of persons with disabilities consisting in wage subsidies, reserved quotas (4%), and employment in the civil service and awareness raising campaigns.

The report informs that the National Strategy on social protection, integration and inclusion of persons with disabilities adopted in October 2005 for the period 2006-2013 aims, *inter alia*, at promoting professional integration of persons with disabilities.

Within this context, the Committee takes note of the amendment to the Romanian Tax Code establishing that the income of severely or moderate disabled persons is tax-free. It also notes that, within the context of sheltered employment, protected units are encouraged to recruit disabled persons *inter alia* by exempting them from taxes on income, provided they reinvest at least 75% of the exemption income to restructure and or equip the workplace for the disabled workers.

The Committee asks the next report to describe the impact of the National Strategy, particularly highlighting whether it has prompted an increase in the integration of persons with disabilities. In so doing, the Committee urges the Government to bear in mind that Article 15§2 of the Revised Charter requires that persons with disabilities be employed in an ordinary working environment; sheltered employment facilities therefore must be reserved for those persons who, due to their disability, cannot be integrated into the open labour market. They should aim nonetheless to assist their beneficiaries to enter the open labour market.

Conclusion

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

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

Paragraph 3 – Liberalising regulations

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

Government Order 56/2007 has amended the legislation on the employment of foreign nationals. Those wishing to undertake paid employment are required to obtain a work authorisation. Requests for such authorisations must be submitted by employers to the Romanian immigration office. They must be accompanied by a series of documents to show that the employer is solvent and his activities are lawful. Employers must also show that they have followed the legal selection procedure for filling vacant vacancies, which must take place after the relevant vacancy has been published by the employment agency of the area where the undertaking is located. They must also show that foreign workers whom they intend to recruit have no criminal record, have the right qualifications and skills for the vacant post and are medically fit for employment.

Once they have been issued with a work authorisation, foreign workers must apply in person to the Romanian diplomatic representation or consulate of their country of residence for a long stay visa for work purposes. Such visas are only issued once the immigration office has given notice of approval. The Committee asks whether this approval constitutes a separate authorisation, subject to other conditions than those governing the issuing of work authorisations.

After they have received their visas and entered Romania, the foreign workers concerned must sign an employment contract and report to the immigration office of their place of residence to obtain a residence permit. There is a right of appeal against refusal to grant a residence permit.

The Committee notes that the procedure as described above is complex and has not been simplified. It therefore considers the situation in Romania not to be in conformity with Article 18§3 of the Revised Charter.

Access to the national labour market

Paid employment

The Committee notes that foreign workers only have access to the labour market if there are no national workers available to fill vacancies. In answer to the Committee, the report states that the immigration office does not have discretionary authority such as to refuse to issue a work authorisation if there is a better qualified national candidate for a job.

To establish that there are no national candidates, employers must follow a legal selection procedure, whose content is still unclear. The Committee therefore asks for a description of this procedure in the next report. It also asks whether quotas are applied for the admission of foreign nationals who wish to work in Romania.

Self-employment

Nationals of member states of the European Economic Area (EEA) may engage in self-employment, subject to authorisation by the mayor of the administrative and geographical area in which they reside. The Committee refers to its previous conclusions for a detailed description of the relevant regulations.

It asks for information in the next report on the regulations applicable to nationals of countries that are not parties to the EEA.

Exercise of the right to employment

The Committee infers from the report that foreign workers may not change either their job or their employer, since work authorisations are only issued for specific jobs and establishments. It asks for confirmation of this and, if so, whether there are any plans to liberalise the regulations.

The Committee recalls that foreigners holding a permanent residence permit do not need a work authorisation to be employed in Romania. The conditions for granting permanent residence permits are laid down in Government Order 194/2002 on the rules governing foreign nationals. Accordingly, foreign nationals who have more than five years' uninterrupted lawful residence are entitled to reside permanently in the country, so long as they have an adequate income and housing, and sickness insurance. They must also have a

satisfactory command of Romanian and not present any threat to public and national security.

Consequences of loss of job

Foreign workers employed in Romania are entitled to stay in the country for a maximum period of 30 days after the expiry of their work authorisation. If, during this period, they find fresh employment, the employer must obtain a new work authorisation. In practice, the requirements imposed for the granting of a work authorisation described above mean that there is little chance of success within this period. The Committee therefore asks whether the fact that a request for a work authorisation has been submitted is sufficient to secure an extension of a foreign national's residence permit, or whether he or she must leave the country until the procedure is completed.

If their employment relationship is terminated before the expiry of their work authorisation, foreign workers may look for fresh employment. No maximum period applies in such cases and the immigration office has a certain discretion in the matter. If the office considers that the purpose of remaining in the country is other than to look for a new job, it may withdraw the relevant residence permit. In any case, if the person in question finds fresh employment, the employer must obtain a new work authorisation.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 18§3 of the Revised Charter on the ground that formalities governing the access of foreign workers to the national labour market were not simplified.

Paragraph 4 – Right of nationals to leave the country

The Committee notes that there is no information provided in Romania’s report concerning Article 18§4.

The Committee points out that under Article 25 of the Romanian Constitution, all citizens are guaranteed the right to free movement in Romania and abroad. Government Regulation no. 65/1997 imposes restrictions on this right, which the Committee has found to fall within

the restrictions set by Article G of the Revised Charter (Conclusions 2003).

In its previous conclusion, the Committee noted that passports could be refused or withdrawn for a period of one to five years for Romanian citizens returning from states with which Romania had no readmission agreement. The Committee asked for further information about the criteria for the application of this measure and the possibility for a person whose freedom of movement had been restricted for one of the reasons listed to appeal against the decision (Conclusions 2005). In the absence of any information in the report, the Committee repeats these questions.

Conclusion

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

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

The Committee notes the information provided in Romania's report.

Equal Rights

The Committee refers to its previous conclusion (Conclusions 2006) for a description of the legal framework.

The Committee had previously requested information on whether the law allowed for pay comparisons across firms, and it repeats its request for this information.

Position of Women in employment and training

Women amount for 53% of the employed population. The unemployment rate among women is lower then for men; 6.4%.

No information is provided in the report on the gender pay gap, the Committee asks for updated information on this, in particular information on measures taken to reduce the pay differentials between men and women.

Measures to promote equal opportunities

The National Agency for Equal Opportunities between men and Women is responsible for implementing the National Strategy for Equal Opportunities between Women and Men 2006-2009. The main objectives of the Strategy are:

Supporting equal access of women and men to the labour market, through –

A. Campaigns for informing women and men of their equal rights on the labour market
B. Promoting equal access to initial and continuous training for women and men
C. Promoting access of women and men to economic activities in which they are under represented
D. Promoting the principle of equal pay for work of equal value

Reconciling family life with professional life through –

A. Promoting measures that allow flexible working hours
B. Encouraging fathers to become involved in raising children,
C. Promoting development of social services within the community for assisting children and dependent persons of the family
D. Information campaigns on maternity protection at the workplace

The Committee asks to be kept informed of any evaluation of the strategy and on its results.

Conclusion

Pending receipt of the information requested the Committee concludes that the situation in Romania is in conformity with Article 20 of the Revised Charter.

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

The Committee takes note of the information provided in the Romanian report.

Scope

In its previous conclusions on Article 24 (Conclusions 2003 and 2007) the Committee concluded that the scope of the provisions dealing with the protection against dismissal is in conformity with the requirements of the Revised Charter.

Obligation to provide a valid reason for termination of employment

The Committee refers to its assessment of the valid reasons for termination of employment in its previous conclusions (Conclusions 2003 and 2007). It further notes that Section 65 of the Labour Code (Law No. 53/2003) stipulates that a dismissal of an employee for reasons not related to the employee's person shall be possible in the event the employee's position is suppressed due to "economic difficulties, technological changes or activity reorganisation". The Committee asks for a summary of significant case law showing how the grounds for termination of employment as assessed in its previous conclusion (*ibid.*) are interpreted by the competent courts in practice. It asks in particular whether courts are empowered to review the facts underlying a dismissal that is based on financial or production-related grounds invoked by the employer.

Section 56 lit. d of the Labour Code states that an individual employment contract is *de jure* terminated "on the date the standard age conditions and the minimum period of contribution are cumulatively met, or, as the case may be, on the date the decision of retirement for age limit or disability of the employee is communicated, according to the law".

The Committee asks how retirement age (mandatory retirement ages set by statute, contract or through collective bargaining) and pensionable age (age when an individual becomes entitled to a state pension) are fixed in Romania and what is the consequence on the employment relationship once an employee has reached retirement and/or pensionable age. It asks in particular whether Romanian law prescribes termination of the employment relationship

on the grounds that an employee has reached the retirement age or whether termination is nevertheless at the discretion of the employer.

The Committee recalls that dismissal on the grounds of age will not constitute a valid reason for termination of employment unless a termination is, within the context of national law, objectively and reasonably justified by a legitimate aim such as a legitimate employment policy, labour market objectives or the operational requirements of the undertaking, establishment or service and provided that the means of achieving that aim are appropriate and necessary. It wishes the next report to provide information on whether and how the legal framework complies with this approach. It asks in particular for confirmation whether Section 56 lit. d of the Labour Code implies that in any event termination on the grounds an employee has reached the retirement age is only possible once the employee has fulfilled the conditions for pension entitlement.

Furthermore, the Committee notes from the report that an employer may terminate the employment relationship if the employee is taken into preventive custody for a period exceeding 30 days. The Committee recalls that a prison sentence delivered by a court, can be a valid ground for termination of an employment contract if such sentence is delivered for employment-related offences. This is not the case in the event of prison sentences for offences unrelated with the person's employment, which cannot be considered a valid reason for termination unless the length of the custodial sentence prevents the employee from carrying out his/her work (Conclusions 2005, Estonia). It asks for further information on the situation in Romania in this respect.

Prohibited dismissals

According to the information provided in the report and Section 61 lit c of the Labour Code it appears that dismissal of an employee for physical or mental incapacity to perform his job is only possible if a disability has been diagnosed by means of a medical certificate. Section 60 para 1 lit a of the Labour Code furthermore states that a dismissal shall not be ordered for "the duration of the temporary industrial disablement" of the employee as established by a medical certificate and its seems from the explanation given in the report that this covers any temporary incapacity to work. The Committee observes that the said provisions indicate that there is no possibility

to dismiss an employee on the ground of temporary absence from work due to his/her illness.

Remedies and sanctions

Section 78 of the Labour Code stipulates that in the event a dismissal is unjustified, the court shall annul it and order the employer to pay an indemnity equal to the indexed, increased or updated wages and the other entitlements the employee would have otherwise benefited from. At the employee's request, the court shall restore the parties to their status prior to the issuance of the dismissal.

The Committee reiterates its question what are the applicable rules regarding compensation in the event the employee does not claim reinstatement or in the event reinstatement is not possible. It further wishes to know whether the compensation is subject to a ceiling. The Committee holds that Article 24 of the Revised Charter requires that courts or other competent bodies are able to order adequate compensation, reinstatement or other appropriate relief. In order to be considered appropriate, compensation should include reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body ruling on the lawfulness of the dismissal, the possibility of reinstatement and/or compensation sufficient both to deter the employer and proportionate to the damage suffered by the victim.

Conclusion

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

Article 25 – Right of workers to the protection of the claims in the event of the insolvency of their employer

The Committee notes the information in the Romanian report.

Act 85/2006 on insolvency procedures defines insolvency as inability to pay debts that are due with available resources. Insolvency is presumed if payment has still not been paid within thirty days of the debt falling due and "imminent" if it is established that the debtor is unable to pay on the due date. The Committee asks whether this definition, and thus the protection of employees, also applies when businesses cease trading without being able to honour their commitments, but have not been formally declared insolvent or placed in receivership.

The Committee notes that legislation was passed during the reference period (Act 200/2006) to establish a guarantee fund to protect employees' wage claims in the event of their employers' insolvency. The fund mainly covers the following claims:

– wages or salaries to a maximum of three times the average gross wage;
– payment for days of annual leave not taken, up to a maximum of one year's work;
– compensation for dismissal in accordance with the relevant collective agreement or employment contract;
– compensation for periods of temporary inactivity;
– compensation for losses caused by occupational accidents or diseases, in accordance with the relevant collective agreement or employment contract.

The report states that Act 200/2006 is applicable to all categories of employee.

The Committee notes that according to the appendix to the Revised Charter, employees' claims in respect of amounts owed for paid absences other than leave must be covered for a stipulated period, which shall be not less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or to the termination of employment. It asks for the next report to state whether the guarantee fund covers paid absences other than leave and, if so, the relevant period of protection, as well as that relating to wage or salary claims.

It also asks for an estimate of the percentage of employees' claims that are satisfied under the guarantee system and the normal or average time that elapses between the filing of the claim and the payment of any sums owed.

Conclusion

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

Chapter 21 – Conclusions concerning Articles 1, 9, 10, 15, 18, 20, 24 and 25 of the Revised Charter in respect of Slovenia

Introduction

The function of the European Committee of Social Rights is to assess the conformity of national law and practice with the European Social Charter and the Revised Charter. In respect of national reports, it adopts "conclusions" and in respect of collective complaints, it adopts "decisions".

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

The Revised European Social Charter was ratified by Slovenia on 7 May 1999. The time limit for submitting the 7th report on the application of the Revised Charter to the Council of Europe was 31 October 2007 and Slovenia submitted it on 11 February 2008. On 10 April 2008, a letter was addressed to the Government requesting supplementary information regarding Article 1§2. The Government submitted its reply on 30 May 2008.

This report was the first under the new system for the submission of reports adopted by the Committee of Ministers.[2] It concerned the accepted provisions of the following articles belonging to the first thematic group "Employment, training and equal opportunities":

– the right to work (Article 1),
– the right to vocational guidance (Article 9),
– the right to vocational training (Article 10),
– the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),

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

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

– the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
– the right of men and women to equal opportunities (Article 20),
– the right to protection in cases of termination of employment (Article 24),
– right of workers to the protection of claims in the event of insolvency of the employer (Article 25).

Slovenia has accepted these provisions with the exception of Article 18§2.

The applicable reference periods were:

– 1 January 2003 – 31 December 2006 for Article 18;
– 1 January 2005 – 31 December 2006 for Articles 1, 9, 10, 15, 20, 24 and 25.

The present chapter on Slovenia concerns 19 situations and contains:

– 7 conclusions of conformity: Articles 1§1, 1§2, 9, 10§4,18§4, 24 and 25;
– 8 conclusions of non-conformity: Articles 1§4, 10§1, 10§2, 10§3, 10§5, 18§1, 18§3 and 20

In respect of the 4 other situations concerning Articles 1§3, 15§1, 15§2 and 15§3, the Committee needs further information. The Government is therefore invited to provide this information in the next report on the articles/provisions in question.

The next Slovenian report will concern the accepted provisions of the following articles belonging to the second thematic group “Health, social security and social protection”:

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

The deadline for the report was 31 October 2008.

Article 1 – Right to work

Paragraph 1 – Policy of full employment

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

Employment situation

The Committee notes that, according to Eurostat, there was fairly sustained growth in Slovenia during the reference period (5.7% in 2006, compared with 4.4% in 2004).

The employment rate continued its upward trend during the reference period, from 65.3% in 2004 to 66.6% in 2006. Women also benefited from this advance (61.8% in 2006).

The overall and youth (15-24) unemployment rates fell slightly, respectively from 6.3% and 6.8% in 2004 to 6% and 6.1% in 2006. On the other hand the female rate rose slightly, from 6.8% in 2004 to 7.2% in 2006. The Committee notes that these various rates are below the EU-15 average (7.7%, 8.5% and 15.7% respectively in 2006).

Long-term unemployment as a percentage of total unemployment fell slightly, from 51.5% in 2004 to 49.3% in 2006, but is still above the EU-15 average (42,1% in 2006).

The report states that no distinction is made in the labour market regarding ethnic origin. The difference referred to previously (Conclusions 2006) between the unemployment rates in the regions inhabited by the Italian and by the Hungarian minorities is largely explained by the different levels of economic development in the two regions.

The Committee notes from another source[1] that roughly 17% of disabled people were registered as jobseekers in 2005 in the public employments services.

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[1] "Reform program for achieving the Lisbon strategy goals", Implementation report 2006, website of the European Union: www.europa.eu.int

Employment policy

The Committee also notes from the same source[1] that the Government continued pursuing measures aimed at achieving full employment, in the framework of the Lisbon Strategy. The largest share of measures was directed towards the increasing of the employment rate and the flexibility of the labour market.

A reform of the tax system was in particular launched in 2005, whose aim is to encourage employers to employ more jobseekers (e.g. progressive phasing out of the payroll tax, measures aimed at encouraging the employment of high-skilled workers).

The Committee wishes to know what measures are envisaged to promote flexibility of the labour market.

Measures to support unemployed people in their job search and to enable them to have access to various training programmes have been taken. This concerns young, adults and in particular the most vulnerable employment categories (such as long-term unemployed). Job creation measures have also been taken to activate unemployed people. A reform of the unemployment benefits is also under way: its aim is to encourage unemployed people to actively search for a job.

A particular effort was made to increase employment among young people with the reorganisation of higher education, of vocational education and the transition from education to labour market. Other measures were aimed at offering them access to training programmes and to encourage employers to employ them. A total number of 23,540 young people participated in these programs in 2005.

Other specific initiatives aiming at gender equality were launched for women, especially in sectors where they tend to be under-represented. An increasing participation of women in active measures was also envisaged.

As regards disabled people, a quota system was also introduced during the reference period, which contributed to increase their

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[1] ibidem

employment rate. Pilot projects within new employment centres for disabled people were also launched.

The Committee notes from the same source that structural unemployment remains a problem, especially for older workers. It also notes from Eurostat that the employment rate of the 55-64 years old was 30.7% in 2005. Despite a regular increase during past years, this percentage is lower than the EU-15 average. Some employment programmes and measures to encourage employers to employ old workers have been envisaged to tackle the problem.

The Committee asks the next report to give information about the total number of beneficiaries of all these measures by categories of population.

It also asks what specific initiatives have been taken in favour of the employment of ethnic minorities and especially the Roma.

The Committee notes that, according to Eurostat, total spending on active and passive employment policy measures in 2005 was the equivalent of 0.71% of GDP, compared with a EU-15 average of 2.2%. Spending on active measures represented 0.2% of GDP in 2005, compared with a EU-15 average of 0.5% in 2005. The Committee notes that these figures are somewhat lower than the EU-15 average. It asks whether it is planned to increase these amounts, particularly in view of the problem of long-term unemployment.

Conclusion

The Committee concludes that the situation in Slovenia is in conformity with Article 1§1 of the Revised Charter.

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

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

1. Prohibition of discrimination in employment

The Committee points out that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of sex,

race, ethnic origin, religion, disability, age, sexual orientation and political opinion.

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

As with other states that have accepted Article 15§2 of the Revised Charter, the Committee will examine Slovenia's legislation banning discrimination based on disability under this provision. Similarly, the Committee will examine Slovenia's legislation banning discrimination based on sex under Article 20.

A description of the situation in Slovenia appears in Conclusions 2006.

The Committee notes that the Employment Act of 24 April 2002 is due to be amended. The Committee asks for the next report to give a full description of the situation in law and in practice with regard to each of the prohibited grounds for discrimination.

As the report does not contain any information on the matter, the Committee repeats its request for information about the courts' interpretation of the concepts of age discrimination and indirect discrimination. On the latter point, it notes that under the Employment Act, indirect discrimination is deemed to have occurred where seemingly innocuous provisions, criteria or practices have placed people at a disadvantage that is not objectively justified, appropriate or necessary. It is planned to adopt an amending act designed to clarify these rules.

The Committee notes that the legislation on permissible exceptions to the general ban on discrimination is being amended. New exceptions will include cases in which essential occupational requirements make distinctions necessary, provided that they are proportionate and justified by a legal objective. The Committee asks to be informed of any exceptions that are adopted so that it can

ensure that they are in conformity with Article 1§2 of the Revised Charter.

The Committee asks again whether associations, organisations or other legal persons that, in accordance with criteria in national legislation, have a legitimate interest in securing conformity with equal treatment within the meaning of Article 1§2 of the Revised Charter are entitled to seek rulings that there has been a breach of the prohibition on discrimination.

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

As the report does not provide any information on this point, the Committee asks again whether there is any ceiling on the amount of compensation that may be awarded in cases of discrimination. If the next report does not provide the necessary information, there will be nothing to show that the situation in Slovenia is in conformity with Article 1§2 of the Revised Charter in this respect.

The Committee points out that under Article 1§2 of the Revised Charter, while it is possible for states to make foreign nationals' access to employment on their territory subject to possession of a work permit, they cannot ban nationals of States Parties in general from occupying jobs for reasons other than those set out in Article G. Restrictions on the rights guaranteed by the Revised Charter are admitted only if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The only jobs from which foreigners may be banned are therefore those that are inherently connected with the protection of law and order or national security and involve the exercise of public authority (Conclusions 2006, Slovenia).

Having noted in its previous conclusions that some posts involving the exercise of public authority are reserved for Slovenian nationals, the Committee stated that this information was not sufficient to assess the situation and asked for further information on the posts concerned. The report fails to provide any further information in this respect so the Committee repeats its request.

2. Prohibition of forced labour

Under section 171 of the Employment Act, employers may exceptionally change the type and location of their employees' work in the event of a natural disaster, an accident or a situation endangering human lives or health, for as long as the situation persists. The aim of this provision is to help employees to deal with the consequences of natural or other disasters, or to prevent such disasters with a view to saving human lives, protecting human health or preventing material loss. The types of disaster covered by the provision include earthquakes, floods, landslides, avalanches, high snow, strong winds, epidemics and other disasters caused by natural forces but also serious road, rail and air accidents, fires, mining accidents, other industrial accidents and ecological or nuclear accidents, as well as wars, states of emergency and other forms of mass violence. The Committee considers that these exceptional circumstances are described in sufficient detail and hence that the situation is in conformity with Article 1§2 of the Revised Charter in this respect.

Prison work

The Committee again asks the Government to answer the questions on prison work in the general introduction to Conclusions 2006, namely:

– Can a prisoner be required to work (irrespective of consent)

  A. for a private undertaking/enterprise?
     i) within the prison?
     ii) outside the prison?
  B. for a public/state undertaking?
     i) within the prison?
     ii) outside the prison?

– What types of work may a prisoner be obliged to perform?
– What are the conditions of employment and how are they determined?

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

Privacy at work

Under Article 44 of the Employment Relationships Act, employers must protect and respect workers' personality rights and take into account and safeguard their privacy. Under Article 46, the gathering, processing, use or transmission to third parties of the personal data of an employee or a candidate for a post is only permitted if prescribed by the law and necessary in order to exercise the rights and obligations arising from or related to the employment relationship.

The Committee asks how these rules are interpreted and implemented by the courts, particularly where there is a conflict between the employee and the employer over the balance between private life and the obligations arising from the employment relationship, in the light of the observations in the General Introduction to Conclusions 2006 (§§ 13-21).

Restrictions linked to the fight against terrorism

The Committee again invites the Government to reply to its question in the General Introduction to Conclusions 2006 as to whether any legislation against terrorism precludes persons from taking up certain types of employment.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Slovenia is in conformity with Article 1§2 of the Revised Charter.

Paragraph 3 – Free Placement Services

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

It notes from another source[1] that a reform aimed at modernising public employment services is envisaged, with a more frequent use of Internet and new technological tools.

However, the report contains no information on the total number of vacancies during the reference period. It hopes that this information will appear in the next report.

According to the report, the placement rate increased from 67,5% in 2005 to 68,4% in 2006.

The report states that employers were obliged to notify posts as vacant when the same person was re-employed at the end of a temporary contract. The report also refers to a mismatch between labour supply and demand. The Committee asks for more details in the next report.

It notes from the above-mentioned source that a total number of 1376 visits from jobseekers to employers have been registered in 2005. The Committee requests that the next report provides more detailed indicators, such as the average length of time necessary to fill vacancies.

It also asks that information on the total number of staff in the public employment services be included in the next report.

According to the same source, the co-operation between public employment services and private agencies has increased during the reference period. The Committee asks information about placements made by the public employment services as a share of total hirings in the labour market.

Conclusion

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

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[1] "Reform program for achieving the Lisbon strategy goals", Implementation report 2006, website of the European Union: www.europa.eu.int

Paragraph 4 – Vocational guidance, training and rehabilitation

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

As Slovenia has accepted Article 9, 10§3 and 15§1 of the Revised Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to guidance, education and vocational training for persons with disabilities are dealt with under these provisions.

In these conclusions, the Committee found that the situation with regard to vocational guidance (Article 9) was in conformity with the Revised Charter. However, it deferred its conclusion on vocational education and training for persons with disabilities (Article 15§1) because a lack of information prevents it from assessing the situation.

The Committee considered moreover that the situation in Slovenia with regard to the vocational training of workers (Article 10§3) was not in conformity with the Revised Charter on the ground that nationals of other States Parties lawfully resident or regularly working in Slovenia are not granted equal treatment regarding access to continuing vocational training.

The Committee concludes that the situation in Slovenia is not in conformity with Article 1§4 of the Revised Charter.

Article 9 – Right to vocational guidance

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

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

Vocational guidance within the education system

a. Functions, organisation and operation

Primary and secondary school pupils are offered guidance at school. In 2005, guidance was also introduced at universities but only certain faculties such as the faculty of economics in Ljubljana provide the service. The Committee asks whether it is intended to extend guidance services to other universities.

The national employment office also offers vocational guidance to students through its vocational information and guidance centres.

In reply to the Committee's question, the report states that students are free to decide whether or not to follow the advice given during guidance sessions.

b. Expenditure, staffing and number of beneficiaries

The number of beneficiaries of vocational guidance in the education system was 8,367 in 2005 and 8,106 in 2006, which was about 5% of all school pupils. In its previous conclusion (Conclusions 2007), the Committee noted that in 2004, 19,976 primary-school pupils had been the subject of team consultations held by guidance counsellors employed by the national employment office. The Committee asks why there was such a decrease in the number of beneficiaries between 2004 and 2005.

In the absence of any reply on the subject in the report, the Committee asks again how many guidance counsellors are employed by primary and secondary schools and how much the budget for vocational guidance in the education system amounts to.

Vocational guidance in the labour market

a. Functions, organisation and operation

Vocational guidance in the labour market is provided by the national employment office and the vocational information and guidance centres and is aimed especially at the unemployed, but also at employed people and interested students. Counsellors offer advice to unemployed people on a one-to-one basis or in groups as well as organising courses, seminars and workshops.

b. Expenditure, staffing and number of beneficiaries

In 2006 there were 23 vocational information and guidance centres, whereas in 2004 there were 28. The Committee asks what is the reason for this decrease.

The national employment office employs eight people at national level, who devise the working methods and tools needed for vocational guidance, and 250 counsellors throughout the country. 40 to 43 counsellors work directly with beneficiaries at local level in the vocational information and guidance centres. The number varies according to staff turnover and needs.

In 2005, 13% of unemployed people took advantage of the vocational guidance offered by national employment services while in 2006, 14% benefited. At the vocational information and guidance centres, there were 97,283 beneficiaries in 2005 and 91,228 in 2006 (compared to 78,744 in 2004), in other words 55 to 60% of total unemployed people.

The Committee asks how much the budget is for vocational guidance in the labour market.

Dissemination of information

In 2005 and 2006, the national employment office was placed in charge of the Guidance Forum project, which resulted, among other things, in three publications. The vocational information and guidance centre holds annual conferences on guidance-related subjects, distributes promotional material such as the Vocational Guide and runs the country's Ploteus portal.

Equal treatment of nationals of the other States Parties

The Committee notes that there has been no change in the situation which it previously considered (Conclusions 2003) to be in conformity with the Revised Charter.

Conclusion

The Committee concludes that the situation in Slovenia is in conformity with Article 9 of the Revised Charter.

Article 10 – Right to vocational training

Paragraph 1 – Promotion of technical and vocational training and the granting of facilities for access to higher technical and university education

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

Secondary and higher education

The Committee takes notes of the Vocational and Technical Education Act which came into force in 2006 and introduced the system of evaluation of education programmes through credit points. According to Section 14 of this Act a credit point is a measurement unit for evaluating all forms of work that have to be undertaken by a student in order to achieve the aims of the education programme. All forms of educational work will be evaluated, including instruction, individual work for preparation for examinations etc. According to the report vocational standards will be prepared as the basis for catalogue of standards of technical knowledge and skills. The initiative for preparing or changing the vocational standards is given by the competent chambers, trade unions and educational institutions. These initiatives are coordinated among social partners.

The Committee also takes note of the Act of 2006 amending the National Vocational Qualifications Act (ZNKP-B) of 2000, which sets as its main principles integration of formal and informal education and ensuring transparency in the implementation of certification procedures which in turn ensures the uniformity of verification and approval procedures at the national level.

The Committee wishes to be kept informed about the implementation of these Acts.

Measures to facilitate access to education and their effectiveness

In its previous conclusions (Conclusions 2003 and 2007) the Committee noted that a length of residence was required for nationals of other States Parties to be eligible for access to vocational training and concluded that the situation was not in conformity with the Revised Charter on this point. The Committee

notes that there have been no changes to this situation. Therefore it reiterates its previous conclusion of non-conformity.

Conclusion

The Committee concludes that the situation in Slovenia is not in conformity with Article 10§1 of the Revised Charter on the grounds that nationals of other States Parties lawfully resident or regularly working in Slovenia are not granted equal treatment as regards access to vocational training.

Paragraph 2 – Apprenticeship

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

It notes that there have been no new developments since its last assessment of the situation (Conclusions 2007).

In its previous conclusion the Committee asked for information on the selection of apprentices and the selection and training of trainers. Since the report does not provide this information the Committee reiterates its question.

In its previous conclusion the Committee held that nationals of other States Parties lawfully resident or regularly working in Slovenia were subject to a length or residence condition to be eligible for apprenticeships. Therefore the Committee concluded that this situation was not in conformity with the Revised Charter. Since there are no changes to this situation, the Committee reiterates its previous conclusion of non-conformity.

The Committee concludes that the situation in Slovenia is not in conformity with Article 10§2 of the Revised Charter on the ground that nationals of other States Parties lawfully residing or regularly working in Slovenia are not granted equal treatment regarding access to apprenticeships.

Paragraph 3 – Vocational training and retraining of adult workers

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

The Committee notes from the report that there have been no new developments regarding vocational training and retraining of adult workers since its last conclusion (Conclusions 2007). Therefore the Committee reiterates its previous conclusion of non-conformity on the grounds that nationals of other States Parties lawfully resident or regularly working in Slovenia are still subject to the length of residence condition to be eligible for continuing vocational training.

Employed persons

In its previous conclusions (2003 and 2007) the Committee asked whether there was legislation authorising individual leave for training and, if so, under what conditions and on whose initiative, how long it lasted and whether it was paid or not paid. Since the report does not provide a reply, the Committee holds that if this information is not provided in the next report there will be nothing to show that the situation in Slovenia is in conformity with Article 10§3 of the Revised Charter on this point.

Conclusion

The Committee concludes that the situation in Slovenia is not in conformity with Article 10§3 of the Revised Charter on the grounds that nationals of other States Parties lawfully resident or regularly working in Slovenia are not granted equal treatment regarding access to continuing vocational training.

Paragraph 4 – Long-term unemployed persons

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

The Committee notes that the Operational Programme of Human Resources Development 2007-2013 is a joint programming document for Slovenia and the EU and aims, among others, at greater employment, social inclusion and higher living standards. Since this programme was launched outside the reference period, the Committee will take it into consideration in its next assessment of the situation.

The Committee notes from Eurostat that the unemployment rate stood at 6,5% in 2005 and at 6,0% 2006. Long-term unemployment

amounted to 47,3% of total unemployment in 2005 and to 49,3% in 2006.

The Committee notes that each national report on this paragraph should provide updated information on the number of unemployed and long-term unemployed persons who took part in training as well as the total expenditure on vocational training for these groups.

Pending receipt of the information requested, the Committee concludes that the situation in Slovenia is in conformity with Article 10§4 of the Revised Charter.

Paragraph 5 – Facilities

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

Fees and financial assistance (Article 10§5 a and b)

The Committee reiterates its request for information regarding education fees.

In its last conclusion (Conclusions 2007) the Committee held that the situation was not in conformity with the Revised Charter since nationals of other States Parties lawfully resident or regularly working were still subject to a length of residence condition to be eligible for financial assistance. The Committee notes that there has been no change to this situation. Therefore it reiterates its previous conclusion of non-conformity on this point.

In its previous conclusions (Conclusions 2003 and 2007) the Committee asked for information on student loans and on whether nationals of other States Parties enjoyed equal treatment regarding access to student loans and national scholarships. Since the report again does not provide this information, the Committee holds that it has not been established that the situation in Slovenia is in conformity with the Revised Charter on this point.

Training during working hours and efficiency of training (Article 10§ 5 c and d)

The Committee notes that there has been no change to the situation which it previously found to be in conformity with the Revised Charter.

Conclusion

The Committee concludes that the situation in Slovenia is not in conformity with Article 10§5 of the Revised Charter on the grounds that it has not been established that nationals of other States Parties lawfully resident or regularly working in Slovenia are granted equal treatment in the matters of student loans and financial assistance for education.

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

Paragraph 1 — Education and training for persons with disabilities

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

The Committee observes that a Directorate for Disabled was established within the Ministry of Labour, Family and Social Protection in 2005. According to the report, the Ministry closely cooperates with and consults persons with disabilities and their representative organisations.

The report also indicates that on 30 November 2006 (at the end of the reference period), the Government adopted the Action plan for Disabled People 2007-2013. Furthermore the Vocational Rehabilitation and Employment of Disabled Persons Act fully entered into force in 2007 (outside the reference period). The Committee asks the next report to provide detailed information on the implementation of both in respect to education and training.

The Committee also reiterates that it wants to be systematically provided with information on the:

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

Anti-discrimination legislation

In its previous conclusion (Conclusions 2007), the Committee acknowledged that the Principle of Equal Treatment Act guarantees equal treatment *inter alia* for persons with disabilities in the exercise of his or her fundamental freedoms in all areas of the life of society,

including education and that it prohibits direct and indirect discrimination.

In its previous conclusion the Committee had however asked whether a compelling justification for placing children in special or segregated educational systems was foreseen by law. Since the report does not provide a reply, the Committee reiterates its request.

The Committee had also previously noted that an Act on Equalisation of Opportunities for Persons with Disabilities was under preparation. It had therefore requested the next report to provide information on such legislation. Since the current report remains silent on this point, the Committee reiterates that it wishes to be kept informed on progress in the adoption of the legislation as well as on its implementation in practice in relation to the prohibition of discrimination in education and training.

The Committee also reiterates its request for details on relevant case law on discrimination relating to education and training.

Education

The Committee refers to its previous conclusions (Conclusions 2003 and 2007) for its assessment of the integration of children with disabilities in mainstream education as regulated by the Placement of Children with Special Needs Act adopted in 2000. The Committee additionally notes from the current report that children with special needs are not only placed in care and education programmes according to their type and level of deficit, handicap and disorders; an individualised care and education programme for each child also has to be established.

In reply to the Committee, the report indicates that the number of children with disabilities placed in mainstream schools with adapted teaching and additional professional help is much higher than those in schools with a modified education programme with lower education standards. In 2006, in primary school, the former were 3,045 whilst the latter were 550; in secondary school, the former were 761 whilst the latter were 178. However, as mentioned above, the Committee needs to be systematically provided with the total number of pupils/students with disabilities to assess the significance of any such figure.

With regard to the aforementioned "modified education programmes with lower education standards", the Committee requests the next report to indicate what percentage of pupils following such programmes continue with higher education and/or enter the labour market. It also asks the next report to indicate how many pupils with disabilities benefiting from the individualised programmes mentioned above, initially placed in a modified programme with a lower education standard, are progressively transferred to an educational programme with an adapted implementation and additional professional help.

The Committee also reiterates its request for comments on the statements[1] quoted in its previous conclusion concerning children with intellectual disabilities and their apparent segregation in special schools, while taking note that there were 171 in 2005; 162 in 2006, and in 2007, 183 young persons aged between 18 and 26 years placed in social welfare institutions or in centres for care and work in accordance with the provisions of the Act Concerning Social Care of Mentally and Physically Handicapped Persons.

While noting the affirmative reply to its question concerning general teacher training and the incorporation of special needs education as an integral component of it, the Committee observes that answers are not provided to many other previous questions concerning the modalities of mainstreaming. The Committee therefore reiterates such questions (Conclusions 2007).

The Committee also reiterates its previous questions with respect to special education, particularly requesting the next report to clarify how the quality of education, sufficient resources, and monitoring are ensured in special institutions. In this framework, it reiterates that Article 15§1 requires the inclusion of children with disabilities into general or mainstream educational schemes and that the lack of "inclusiveness" may give rise to a finding of non conformity.

To assess whether the right to equal treatment in education is guaranteed in an effective manner, the Committee asks the next report to answer all the questions posed and reiterated. It points out

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[1] EUMAP (EU Monitoring and Advocacy Programme of the Open Society), Right of People with intellectual disabilities: access to education and employment, Summary Report Slovenia, 2005.

that if the necessary information is not provided in the next report, there will be nothing to show that the situation is in conformity with Article 15§1 of the Revised Charter in this respect.

Vocational training

The Committee notes from the report that in 2006, out of 24,678 unemployed persons with disabilities, 3,000 were included in various training facilities and 1,112 were included in vocational rehabilitation. The report further indicates that there are 13 rehabilitation institutions aimed at training disabled persons for working, finding work, getting a job, keeping employment and advancing in their jobs.

The Committee however also observes that the report again does not to address or properly answer its previous questions (Conclusions 2003 and 2007) on vocational training of persons with disabilities. Should the necessary information not be provided in the next report, there will be nothing to show that the situation is in conformity with Article 15§1 of the Revised Charter in this respect.

The Committee refers to its conclusion under Article 15§2 and 15§3 for its assessment of the occupational activity centres.

Finally, as mentioned above, the Vocational Rehabilitation and Employment of Disabled Persons Act fully entered into force in 2007 (outside the reference period), the Committee will therefore examine its implementation during the next supervision cycle.

Conclusion

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

Paragraph 2 – Employment of persons with disabilities

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

While reiterating its request for the total number of persons with disabilities, as well as that of those in working age, the Committee notes from the report that according to data of the Fund of the Republic of Slovenia to promote the employment of the disabled

persons, 32,584 persons with disabilities were employed as of January 2007.

The Committee however also notes that as of December 2006, the number of unemployed persons with disabilities in the records of the Employment Service remained high (9,507 persons with disabilities were active job seekers), while the number of recipients of allowances in accordance with other regulations (including mostly persons with work-related disability receiving allowances from the Pension and Disability Insurance Institute and being unemployed for more than two years) was 15,455.

Anti-discrimination legislation

The Committee refers to its previous conclusion (Conclusions 2007) for an assessment of the 2003 Employment Relations Act (ERA), the Implementation of the Principle of Equal treatment Act (IPETA) and the 2004 Vocational Rehabilitation and Employment of Disabled Persons Act (VREDPA). As to the latter and its full entry into force in 2007, *mutatis mutandi* reference is made to the considerations made and questions addressed in the conclusion under Article 15§1. Moreover, the Committee asks the next report to provide up-to-date information on the implementation in practice of all these acts.

The Committee also reiterates its specific questions concerning the implementation of the reasonable accommodation obligation, i.e. :

a. How is the reasonable accommodation obligation implemented in practice?
b. Has the reasonable accommodation obligation given rise to cases before courts?
c. Has the reasonable accommodation obligation prompted an increase in employment of persons with disabilities in the open labour market?

The Committee also reiterates its general request for examples of complaints filed with the pertinent institutions on discrimination of persons with disabilities in employment.

Measures to promote employment

The Committee refers to its previous conclusions (Conclusions 2003 and 2007) for a description of the various measures in place to

promote the employment of persons with disabilities in the ordinary labour market.

As regards the introduction of a quota system (implemented since 2006), it notes from the report that it binds all employers with at least 20 employees to employ persons with disabilities. Slightly less than half of the employers bound to fulfil such mandatory quota fail to meet it. Three tenths of employers employ persons with disabilities above the quota and nearly a quarter met it. The Committee reiterates that to be relevant the figures provided must also include the total number of persons with disabilities, as well as that of those in working age. It asks this information to be provided systematically in further reports.

As regards persons with intellectual disabilities, the Committee reiterates its request for comments on the statements[1] quoted in its previous conclusion concerning their apparent entire exclusion from the application in practice of the Vocational Rehabilitation and Employment of Disabled Persons Act (VREDPA). In this regard the Committee also reiterates its previous questions as to whether people with intellectual disabilities may access sheltered employment and, more generally, if the VREDPA has been amended to increase the employment possibilities of persons with intellectual disabilities.

The Committee notes from the report that occupational activity centres have replaced the former workshops for work under special conditions. They are institutions providing the service of guiding, caring for and employing under special conditions adults with physical and mental development disorders. Funding for the services provided by the centres is obtained from user contributions, non-governmental organisations, donations and other sources. The Committee asks the next report to provide more details.

Finally, the Committee reiterates all the questions raised in its previous conclusions (Conclusions 2003 and 2007) concerning sheltered employment, including its request for figures on the

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[1] EUMAP (EU Monitoring and Advocacy Programme of the Open Society), Right of People with intellectual disabilities: access to education and employment, Summary Report Slovenia, 2005.

number of persons with disabilities employed in all forms of sheltered employment.

Conclusion

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

Paragraph 3 – Integration and participation of persons with disabilities in the life of the community

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

Anti-discrimination legislation and integrated approach

The Principle of Equal Treatment Act, guarantees equal treatment *inter alia* for persons with disabilities in the exercise of his or her fundamental freedoms in all areas of the life of society, and especially in the fields of employment, labour relations, education, social security, and access to and supply of goods and services. The Act prohibits direct and indirect discrimination.

The Committee recalls that the right of persons with disabilities to social integration provided for by Article 15§3 implies that barriers to communication and mobility be removed in order to enable access to transport (land, rail sea and air), housing (public, social and private), cultural activities and leisure (social and sporting activities). To this end Article 15§3 requires:

– the existence of comprehensive non-discrimination legislation covering both the public and private sphere in fields such as housing, transport, telecommunications and cultural and leisure activities and effective remedies for those who have been unlawfully treated;
– the adoption of a coherent policy in the disability context: positive action measures to achieve the goals of social integration and full participation of persons with disabilities. Such measures should have a clear legal basis and be co-ordinated.

The Committee previously considered that it did not have enough information on the legislation to asses whether it meets the

requirements of Article 15§3 and asked for further information (Conclusions 2007). It found no information on the legislation. Therefore it again asks the next report to provide detailed information on the above mentioned Principle of Equal Treatment Act and asks whether this Act covers the activities under Article 15§3. The Committee underlines that, if the requested information is not included in the next report, there will be nothing to show that the situation is in conformity with Article 15§3 of the Revised Charter on this point.

In 2006 the Government adopted the Action Plan for Disabled Person 2007-2013. The aim of the plan is to promote the full inclusion of persons with disabilities. It consists of 12 basic objectives, including the full accessibility of the built environment, transport, communication systems, equal participation of persons with disabilities in sporting and recreational activities, ensuring all persons with disabilities have the right to decide where and how they live.

The Committee asks to be kept informed of progress made in the implementation of the Action Plan.

Measures to overcome barriers

National Guidelines to Improve the Built environment, information and Communication Accessibility for disabled Persons 2006 -2015 have begun to be implemented. In this context the National Assembly Elections Act was amended in 2006 to ensure the accessibility of polling stations, including the provision of adjusted ballot papers and voting machines. The Committee asks to be kept informed of all significant measures taken as a result of the guidelines.

Technical aids

Insured persons are provided with medical technical devices needed for treatment and medical rehabilitation. This includes the right to prosthesis, orthesis and orthopaedic shoes, wheelchairs and other devices for moving, standing and sitting, eyesight devices, hearing devices and devices for speech and sight, oxygen concentrators and other devices for maintaining constant pressure in the respiratory system.

The Health Insurance Institute may approve full payment of an orthopaedic, orthotic or another device to persons with disabilities and other persons with the acknowledged need for attendance in performing the majority or all life functions, persons with at least 70% disability under the law on pension and disability insurance, and persons receiving the disability grant under the Act Concerning Social Care of Mentally and Physically Handicapped Persons.

The Committee refers to its statement of interpretation on Article 15§3 in the General Introduction to these conclusions.

It asks whether persons with disabilities are entitled to free technical aids or must contribute themselves to the cost. If an individual contribution is required, the Committee asks whether the state provides some financial contribution to the cost of obtaining technical aids. It also asks whether persons with disabilities are entitled to free support services, such as personal assistance or home help, when required, or have to meet some of the cost of such measures. The Committee finally asks whether mechanisms are in place to assess the barriers to communication and mobility faced by individual persons with disabilities and to identify the technical aids and support measures that may be required to assist them in overcoming these barriers.

Communication

The Committee recalls that the Construction Act requires that all newly built or renovated buildings in public use shall be accessible to persons with physical and sensory disabilities.

The Committee recalls that sign language is recognised as a national language and deaf persons have the right to free interpreting services in all dealings with state institutions, further deaf persons receive vouchers entitling them to free interpreting services where they deem such services necessary. The Government budget for interpretation services continues to increase.

Special telephone and Internet rates and facilities are available to persons with sensory disabilities and other disabilities.

Mobility and transport

The Committee reiterates its question for information on the requirements for accessibility to public transports (rail, road, sea and air).

Housing

The Housing Act 2003 provides that persons with disabilities have priority in access to social housing, and that social housing must be made accessible.

Family assistants were introduced in 2004; legislation allows persons who would otherwise need institutional care to an assistant of their choice 24 hours per day which would allow the person to remain in their home.

In 2007, four programmes for independent living with personal assistance were financed. Personal assistance is provided for between 2 to 24 hours a day enabling the individual to remain living in the community. Approximately 300 persons benefits from these programmes. The Committee asks whether these programmes have been continued and whether supply of assistance matches demand.

Cultural and leisure activities

The projects for cultural activities of disabled persons are performed through public invitations implemented by the Ministry of Culture. They are primarily projects for the blind and partially sighted and the deaf and hearing impaired. Since 1998, the Foundation for Financing Disability and Humanitarian Organisations (FIHO) allocates funding to the programmes of organisations of persons with disabilities, which implement special programmes tailored to the needs of persons with disabilities not met by the state in full. The Foundation financed more than 300 various programmes in 2006. They are also programmes for social gatherings, recreational and sports activities or spare time activities.

Conclusion

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

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

Paragraph 1 – Applying existing regulations in a spirit of liberality

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

Foreign population and migratory movement

The Committee has not been provided with any information on trends observed in Slovenia in relation to migration flows and the foreign population. It would like future reports to contain this information.

Work Permits

The Committee notes from the report that since its accession to the European Union on 1 May 2004, Slovenia has granted citizens of the European Economic Area full access to the labour market. Such citizens are accordingly allowed to enter Slovenia on presentation of an identity document or valid passport and may engage in a gainful occupation without any further formality. The Committee notes, however, that for periods in excess of 3 months, Community citizens were initially required to obtain a residence permit, until the entry into force of the Act amending the Aliens Act (Law No. 93/05) which, in accordance with Directive 2004/38/EC[1], replaced this obligation with one requiring citizens to apply to the administrative unit in the area where they are residing for a certificate of registration of residence. The report indicates that since the entry into force of that Act on 20 November 2005, some 2,025 certificates have been issued, of which 1,194 have been for paid employment and 40 for self-employment.

The Committee notes that the regulations regarding nationals of states not party to the EEA remains unchanged. It points out in this connection that a foreign worker's first entry in Slovenia may only be authorized on the basis of a temporary residence permit and within

[1] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states.

the limits of the statutory immigration quota established annually by the Government. The report indicates, nonetheless, that to date no quota has been set by the Government. The Committee wishes to be informed of any application of the quota regime in future reports.

Foreign nationals entering Slovenia for the purposes of employment must also obtain a work permit. On this point the Committee refers to its conclusion under Article 18§3.

Relevant statistics

The report provides figures on the total number of temporary and permanent residence permits issued to nationals of Council of Europe member states for the period from 1 January 2005 to 31 December 2006. Bearing in mind that nationals of states parties to the EEA were subject to the residence permit requirement only until 20 November 2005, the Committee deduces that the figures provided relate primarily to nationals of Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Moldova, Russia, Serbia and Montenegro, "the former Yugoslav Republic of Macedonia", Turkey and Ukraine.

According to the figures provided in the report, some 77,500 temporary residence permits were issued to nationals of the countries mentioned above. Of these, some 40,958 were granted for an occupational activity, 11,787 for seasonal employment, 4,157 for seconded workers and 2,182 for daily migrant workers. 11,825 permanent residence permits were issued to nationals of these same countries. The majority of temporary residence permits were issued to nationals of Bosnia and Herzegovina, followed by nationals of Serbia and Montenegro, Croatia and "the former Yugoslav Republic of Macedonia".

The report provides the number of residence permits issued for employment purposes. However, it does not indicate the number of applications submitted and rejected. The Committee reiterates that the assessment of the degree of liberality used in applying existing regulations is based on figures showing the refusal rates for both work permits for first-time and renewal applications submitted by nationals of States Parties (Conclusions XVII-2, Spain).

The Committee points out that it had deferred its last two conclusions on account of the incomplete statistics which failed to satisfy one or

more of the above requirements. The Committee considers that while the reason for the two deferrals in question is different in respect of the form, it is the same as regards the substance, i.e. the lack of particular statistics. Consequently, in view of the repeated failure to provide statistics enabling the Committee to assess the situation, it considers that it has not been established that the existing regulations governing the right to engage in a gainful occupation in Slovenia are applied in a spirit of liberality.

Conclusion

The Committee concludes that the situation in Slovenia is not in conformity with Article 18§1 of the Revised Charter on the ground that it has not been established that the existing regulations are applied in a spirit of liberality.

Paragraph 3 – Liberalising regulations

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

The Committee reiterates that formalities are one of the aspects of regulations governing the employment of workers which are dealt with specifically under Article 18§2 – not accepted by Slovenia – but which are also covered by paragraph 3 (Conclusions IX-1, United Kingdom).

The Committee notes that foreigners must obtain a temporary residence permit for the purposes of employment prior to entering the country. With regard to the formalities relating to the issuing of this permit, the Committee refers to its previous Conclusions 2005. It reiterates however that an application for a residence permit must be made to the Slovenian consular services in the worker's own country. Although it is possible for employers wishing to take on seasonal workers and, since the Act amending the Aliens Act (Law No. 93/05), seconded workers, to submit the application in Slovenia and not abroad, the residence permit, once issued, is provided to the applicant abroad and must have been obtained prior to arrival in Slovenia.

The Committee points out that under Article 18 of the Revised Charter, it should be possible for a foreign worker to complete the formalities for the granting of a work permit in the country of origin as

well as in the country of destination (Conclusions XVII-2, Finland, Article 18§2). It asks whether it is planned to enable residence permits to be provided to foreign workers already in Slovenia.

The Committee further points out that foreign nationals entering Slovenia to work must obtain not only a residence permit but also a work permit. There are three categories of work permit: personal work permits, employment permits and authorisations to work. With the exception of the personal work permit, the other two categories are issued on the basis of an application submitted by the employer.

In its previous conclusions (Conclusions 2003 and 2005), the Committee criticised this dual procedure for issuing work permits and residence permits. In this regard, the report indicates that the competent authorities now have a common database, which has harmonised the two procedures. It adds that a merging of the two procedures could be possible only in the long term since it would require not only revising the two relevant Acts – the Aliens Act and the Employment of Aliens Act - but also carrying out a feasibility study.

The Committee asks whether the issuing of a work permit automatically leads to the issuing of a residence permit for employment purposes where all the other conditions relating to the latter have been satisfied. It would like future reports to provide information on the steps taken to merge the procedures for obtaining the two permits.

With regard to the time taken to issue work permits and authorisations to work, the report indicates that the Employment Service has two months within which it must verify whether or not there is suitable priority unemployed person who could fill the post and issue its decision. However, in the case of work permits issued to engage in an occupation for which there is a shortage in the labour force, given that such checks are no longer necessary, the Employment Service must process applications within one month. The personal work permit is issued within one or two months, depending on whether it is for a fixed or indefinite period. The Committee considers that the timeframes in question are reasonable.

Access to the national labour market

The Committee notes that for foreign workers a permit for first residence in Slovenia may only be issued in the form of a temporary residence permit which cannot be delivered for a period longer than one year. Temporary residence permits are issued for the specific activity in which the foreign worker wishes to engage, i.e. occupational activity, seasonal employment, research, cross-border work or seconded work. Accordingly, if the residence permit has been delivered for the purposes of engaging in an occupational activity for a fixed period of time and if at the end of that contract, the foreign worker wishes to engage in seasonal work, a new application for the relevant residence permit must be submitted. The Committee has already drawn attention to the restrictive nature of limiting residence permits to specific activities (Conclusions 2005). It asks whether some liberalisation in this respect is anticipated.

The Committee notes that employment permits and authorisations to work are granted only as long as the quota set by the Government for the form of employment in question has not been used up and provided that that the employment of a foreign worker does not have a prejudicial effect on the Slovenian labour market. As a general rule, an employment permit or an authorisation to work is issued on condition that in the records of the employment service there are no suitable domestic unemployed persons available to do the job in question. The report indicates that employment permits are now issued for an initial period of three years. It also indicates that the quotas for the years 2004 to 2006 were not entirely used up. In addition, in 2006, among the 50,734 work permits in existence, only 18,601 had been issued under the quota arrangements.

Exercise of the right of employment

For a detailed description of the rights which the various categories of work permits confer upon their holders, the Committee refers to its previous conclusions (Conclusions 2005). It reiterates, nevertheless, that a personal work permit, which enables its holder to take up employment with any employer or become self-employed, can only be applied for by a foreigner who has been employed for five years without interruption with the same employer or by a self-employed foreigner who has been self-employed in Slovenia for three years without interruption. The Committee also recalls that holders of a

permanent residence permit may apply for an indefinite personal work permit. In this connection, the Committee notes from the report that under Law No. 93/05 the residence condition for obtaining a permanent residence permit has been shortened from eight to five years of uninterrupted residence.

Consequences of a job loss

The Committee recalls that a work permit may be cancelled and withdrawn if the foreigner's residence permit expires or is terminated, if the foreigner is absent from Slovenia for more than six months continuously or if he or she performs work other than for which the work permit was issued. The work permit has to be returned by the foreign worker in the event that the employment or contractual relationship ends or is terminated prior to the expiry of the validity of the work permit.

Although regulations governing the employment of foreigners in Slovenia have introduced a few liberalising changes, there remain many restrictive rules which are problematic in respect of Article 18§3 of the Revised Charter : the dual procedure for granting residence and work permits; the fact that temporary residence permits may in principle be obtained only in the foreign worker's country of origin and for a specific activity, the fact that foreign workers may in principle only be granted an initial work permit for a specific job with a specific employer (Conclusions 2005), and the fact that work permits and related temporary residence permits may be cancelled in the event of an early termination of the employment relationship or of the independent activity of self-employed workers.

In the light of the above, the Committee concludes that the situation in Slovenia is not in conformity with Article 18§3 of the Revised Charter.

Conclusion

The Committee concludes that the situation in Slovenia is not in conformity with Article 18§3 of the Revised Charter on the ground that numerous restrictive rules relating to the employment of foreign workers have not been liberalised.

Paragraph 4 – Right of nationals to leave the country

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

Article 32 of the Slovenian Constitution enshrines the principle of freedom of movement, including the freedom to leave the country. Restrictions on this are authorised only if they are prescribed by law and necessary for maintaining national security or the public order, preventing the spread of contagious diseases or facilitating the proper functioning of criminal justice.

According to the report, under Article 195 of the Code of Criminal Procedure, persons on a criminal charge may be prohibited from leaving the country or have their passport removed to prevent them from absconding or reoffending. The same applies to persons on conditional release, who, under section 77 of the Enforcement of Criminal Sentences Act, may only leave the country in exceptional circumstances and only if they have been granted authorisation to do so by the Minister of Justice.

The Committee considers that these restrictions are among those authorised by Article G of the Revised Charter as they are prescribed by law, pursue the legitimate aim of the proper functioning and administration of justice and are necessary for the protection of public order. The Committee asks nonetheless whether Slovenian citizens may be prevented from leaving the country for any other reasons than those mentioned in the report. In this connection, it recalls that it noted previously that the 1988 Act governing the security of citizens of the Socialist Federal Republic of Yugoslavia working temporarily abroad contained provisions setting conditions which citizens wishing to leave the country to work abroad had to meet (Conclusions 2003). The Committee asks whether this law is still in force; if so, it asks for the next report to give a detailed account of the relevant provisions.

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

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

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

Equal Rights

The Committee refers to its previous conclusions (Conclusions 2006) for a description of the legal framework.

As regards equal pay, the report states that equal pay is ensured in collective agreements through the formulation of "tariff classes" by which jobs are classified taking into account their complexity.

The Committee asked whether it was possible in equal pay cases to make comparisons of pay and jobs outside the company directly concerned where this is necessary for an appropriate comparison. It reiterates its request for this information

The Committee had previously noted that women were in principle prohibited from undertaking certain night work in industry and construction, and that women were prohibited from undertaking underground work in mines. The report explains that these prohibitions are a result of Slovenia's ratification of certain ILO Conventions, which Slovenia intends to denounce.

The Committee notes that the prohibition on the night work of women in industry and construction has been relaxed, and that women may perform night work in these sectors where certain conditions are met, However, it nevertheless finds that the conditions are overly restrictive and amount to discrimination. It highlights that night work must be regulated for all workers (see Article 2§7 of the Revised Charter) and that (with the exception of pregnant or breast feeding women) there should be no difference in treatment between men and women.

The Committee finds that the prohibition on women working in underground mines and the restrictions on night work for women in industry and the construction sector are the situations not in conformity with Article 20 of the Revised Charter.

Position of women in employment and training

The female employment rate in 2006 was 61.8%, female unemployment rate 7.2% while the male unemployment rate was 4.9%. According to the report in 2006 the gender wage gap was 8%.

Measures to promote equal opportunities

The report again mentions the National Programme of Equal Opportunities for Men and Women 2005-2013, the Committee asks the next report to provide information on the results achieved and progress made by this programme.

Conclusion

The Committee concludes that the situation in Slovenia is not in conformity with Article 20 of the Revised Charter on the grounds that women are prohibited from working in underground mines, and in principle are prohibited from night work in industry and in the construction sector.

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

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

Scope

As regards termination of employment during and following completion of a probationary period, the Committee notes from another source[1] that employment contracts may be subject to a probationary period of up to six months. An employer may not terminate an employment contract during a probationary period, except in the event (i) that there are reasons for a summary dismissal of an employee (grave misconduct of an employee and similar grounds), or (ii) of bankruptcy, compulsory composition or liquidation of the employer. Upon the expiry of the probationary period, the employer may only terminate the employment contract if an employee did not satisfactorily complete the probationary period. For many categories of employees collective agreements regulate certain procedural requirements to be followed by an employer when assessing the employee's work during the probationary period and when deciding whether his or her work is satisfactory or not.

Obligation to provide a valid reason for termination of employment

The Committee refers to its assessment of the valid reasons for termination of employment under Slovenian law in its previous conclusion on Article 24 (Conclusions 2007).

The Committee reiterates its request for a summary of significant case law showing how the grounds for termination of employment pursuant to Sections 88 and 111 of the Employment Relationships Act are interpreted by the competent courts in practice. It asks in particular whether courts are empowered to review the facts underlying a dismissal that is based on financial or production-related grounds invoked by the employer.

As regards termination of employment on the grounds of age, the Committee notes that according to Section 114 of the Employment

[1] http://ec.europa.eu/employment_social/labour_law/docs/report_slovenia_en.pdf

Relationships Act, the employer may not terminate the employment contract of an older worker for business reasons without the latter's written consent unless (i) the worker completes the minimum conditions for receiving old-age pension or (ii) would be entitled to unemployment benefit for the period until he is entitled to old-age pension. Furthermore, according to Section 89 of the said Act, age shall be deemed as an unfounded reason for ordinary termination of an employment contract.

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

The Committee holds that dismissal on the grounds of age will not constitute a valid reason for termination of employment unless a termination is, within the context of national law, objectively and reasonably justified by a legitimate aim such as legitimate employment policy, labour market objectives or the operational requirements of the undertaking, establishment or service and provided that the means of achieving that aim are appropriate and necessary. It wishes the next report to provide information on whether and how the legal framework complies with this approach.

Prohibited dismissals

The Committee examined the situation as regards dismissals prohibited under Slovenian law in its previous conclusions and found the situation to be in conformity with the Revised Charter.

Remedies and sanctions

The Committee noted in its previous conclusion on Article 24 that an employee who believes that he/she has been unlawfully dismissed

may take a case to the labour courts. Pursuant to Section 82 of the Employment Relationships Act, in the event the employer terminates an employment relationship, he has the burden of proving the existence of a substantiated reason for the termination.

Pursuant to Section 118 of the Employment Relationships Act, in the event the labour court finds that a dismissal was unlawful and should the employee not wish to continue the employment relationship or should the court find that continuation of the employment relationship is no longer possible, it may award compensation to the employee in accordance with the rules of civil law.

The Committee asks for confirmation that the labour courts have the right to order reinstatement of the unlawfully dismissed worker should the latter want to continue his employment relationship. It further wishes the next report to specify what are the applicable rules of civil law as regards the determination of compensation in cases of unlawful dismissal and in particular whether compensation in such cases is subject to a ceiling.

Conclusion

The Committee finds the situation in Slovenia to be in conformity with Article 24 of the Revised Charter.

Article 25 – Right of workers to the protection of their claims in the event of the insolvency of their employer

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

The Committee notes from the report that the situation which it has previously considered to be in conformity with the Revised Charter has not changed. In this connection, it recalls out that the Slovenian Act instituting the Guarantee and Maintenance Fund (ZJSRS) governs the establishment and operation of a guarantee fund to protect workers' claims in the event of the insolvency of their employer. The fund is financed by employer's contributions, the State Budget and by enforcement of claims; the State will provide financing where other revenues of the fund are not sufficient to cover liabilities.

Under the ZJSRS employers are deemed to be insolvent if bankruptcy proceedings have been initiated against them, or if the decision confirming the compulsory preparation of a financial recovery package has become legally enforceable. However, the protection of workers' claims extends to situations where the enterprise's assets do not warrant the opening of formal insolvency proceedings. Section 19 of the ZJSRS guarantees unpaid wages for the last three months prior to the termination of employment and unpaid compensation for paid absences within the same three months up to a maximum of three times the statutory minimum wage (522 € in January 2007[1]).

Moreover, holiday pay for unused leave in the current calendar year is guaranteed up to one half the statutory minimum wage and redundancy pay for up to one full statutory minimum wage. In order to benefit from the guarantee, workers must register their claims. As a general rule, the time from submitting an application under the Guarantee Fund to actual payment generally amounts to between 90 and 100 days.

In reply to the Committee's question regarding the protection of workers of foreign enterprises, the report states that the ZJSRS has been amended and supplemented by Law No. 61/06, in compliance

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[1] www.epp.eurostat.ec.europa.eu/

with Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002[1]. Henceforth, where an undertaking with activities in the territories of at least two member states is in a state of insolvency, the institution responsible for meeting employees' outstanding claims shall be that in the member state in whose territory they habitually work.

With regard to workers not covered by Directive 2002/74/EC, the report states that there have been no cases of enforcement of rights under the Guarantee Fund for workers employed by a company from a non-EU member operating through a subsidiary. The Committee asks whether if such a case were to present itself, the workers of these companies would be eligible for the Guarantee Fund.

Regarding the non-payment by the Guarantee Fund of a third of workers' claims in 2003, the report states that this figure does to reflect the individual level of reimbursement for each worker but the general level of reimbursement for all claims submitted by workers, whether deriving from unpaid wages, unused annual leave or severance pay. The report explains that, while some workers had their claims settled in full, others received only a proportion, in accordance with, among other things, the maximum amounts imposed by legislation.

Lastly, the report provides details of the number of workers who benefited from the Guarantee Fund in 2003, 2004 and 2005. According to the figures provided, in the course of the reference period 7,062 persons were reimbursed in respect of wages due, 6,048 in respect of unused annual leave and 6,880 in respect of severance pay. The Committee asks whether the reimbursements in question cover the total of the amounts claimed. Where applicable, it would like future reports to provide systematically details of the percentage of the amounts claimed that is actually reimbursed and the overall percentage of workers' claims honoured by the Guarantee Fund.

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[1] Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of Laws of the member states relating to the safeguard of employees' rights in the event of insolvency of their employer.

The Committee concludes that the situation in Slovenia is in conformity with Article 25 of the Revised Charter.

Chapter 22 – Conclusions concerning Articles 1, 9, 10, 15, 18, 20 and 25 of the Revised Charter in respect of Sweden

Introduction

The function of the European Committee of Social Rights is to assess the conformity of national law and practice with the European Social Charter and the Revised Charter. In respect of national reports, it adopts "conclusions" and in respect of collective complaints, it adopts "decisions".

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

The Revised European Social Charter was ratified by Sweden on 29 May 1998. The time limit for submitting the 7th report on the application of the Revised Charter to the Council of Europe was 31 October 2007 and Sweden submitted it on 30 May 2008 and supplementary information was submitted on 16 October 2008.

This report was the first under the new system for the submission of reports adopted by the Committee of Ministers.[2] It concerned the accepted provisions of the following articles belonging to the first thematic group "Employment, training and equal opportunities":

– the right to work (Article 1),
– the right to vocational guidance (Article 9),
– the right to vocational training (Article 10),
– the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
– the right to engage in a gainful occupation in the territory of other States Parties (Article 18),

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

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

– 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 of workers to the protection of claims in the event of insolvency of the employer (Article 25).

Sweden has accepted all these articles with the exception of Article 24.

The applicable reference periods were :

– 1 January 2003 – 31 December 2006 for Article 18;
– 1 January 2005 – 31 December 2006 for Articles 1, 9, 10, 15, 20 and 25.

The present chapter on Sweden concerns 19 situations and contains:

– 16 conclusions of conformity: Articles 1§1, 1§2, 1§3, 1§4, 9, 10§1, 10§2, 10§3, 10§4, 15§1, 15§2, 15§3, 18§1, 18§2, 18§4 and 25;
– 3 conclusions of non-conformity: Articles 10§5, 18§3 and 20.

The next Swedish report deals with the accepted provisions of the following articles belonging to the second thematic group “Health, social security and social protection”:

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

The deadline for the report was 31 October 2008.

Article 1 — Right to work

Paragraph 1 – Policy of full employment

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

Employment situation

The Committee notes that, according to Eurostat, growth in Sweden was stable during the reference period (at 4.2% in 2006).

The employment rate resumed its upward trend during the reference period, rising from 72.1% in 2004 to 73.1% in 2006, as did the female employment rate, which increased from 70.5% in 2004 to 70.7% in 2006. These rates are higher than the EU 15 average (respectively 66.2% and 58.7%).

Unemployment rose from 6.3% in 2004 to 7.1% in 2006. Female unemployment also increased from 6.1% to 7.2% over the same period, along with unemployment among young persons (15-24), which rose from 16.3% to 21.5% in 2006. Whereas the general and female unemployment rates were below the EU 15 average (7.7% and 8.5% respectively in 2006), the Committee notes that unemployment among young persons was higher than the EU 15 average (15.7% in 2006).

It also notes that the number of the long-term unemployed as a proportion of all unemployed decreased from 19.3% in 2004 to 15.2% in 2006, which is much less than the EU 15 average which was 42.1% in 2006.

The Committee requests up-to-date information on the employment situation of persons with disabilities and immigrants.

Employment policy

The Committee notes that the main aims of the Government's employment policy are as follows:

– to encourage unemployed people to get back to work;
– to offer companies tax incentives to take on more employees;
– to promote entrepreneurship, particularly for women.

The report describes various tax measures designed to stimulate the labour market, making it easier for unemployed people to find new jobs (including, in particular, reductions in employers' social contributions) and fostering entrepreneurship.

Priority was again given to the most vulnerable categories of potential employees (the long-term unemployed, persons with disabilities, women and young people) through various measures, such as tax concessions for companies taking on long-term unemployed people and a new programme, launched in 2006, whose aim is to promote the retraining and recruitment of persons with disabilities.

The Committee notes the launch of "first employment" programmes for young graduates. Given the high level of youth unemployment, it asks what other measures are taken against this.

The Committee asks how many people take part in active measures. It also asks again what the activation rate of unemployed people is.

The Committee notes that total spending on active and passive employment policy measures decreased during the reference period from 2.5% of GDP in 2004 to 2.3% in 2006, whereas the EU 15 average was 2% of GDP in 2006. The proportion of spending on active measures increased slightly, from 1% of GDP in 2004 to 1.1% in 2006.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 1§1 of the Revised Charter.

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

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

1. Prohibition of discrimination in employment

The Committee considers that under Article 1§2 legislation should prohibit discrimination in employment in particular on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion.

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

As there has been no change in the anti-discrimination legislation, the Committee refers to its previous conclusion (Conclusions 2006) for a description thereof and its findings on the subject.

As to discrimination on the basis of age, the Committee notes that the parliamentary committee on discrimination presented its final report in February 2006. It contains a proposal for age to be considered a specific ground for discrimination in the workplace. A change to the relevant legislation is planned. The Committee asks to be informed of any action taken on this proposal.

The Committee recalls that under Article 1§2 of the Revised Charter, remedies available to victims of discrimination must be adequate, proportionate and dissuasive. Therefore the imposition of pre defined upper limits to compensation that may be awarded are not in conformity with Article 1§2 as in certain cases these may preclude damages from being awarded which are commensurate with the actual loss suffered and not sufficiently dissuasive. In Swedish law, victims of discrimination or reprisals are entitled to compensation. Compensation is made of two combined components – compensation for material losses and reparation for non-pecuniary damage. Neither is subject to an upper limit although compensation for material losses is currently limited to a certain number of months of salary of the person concerned. The report states that the Government is planning to do away with this limit as well. The Committee asks to be kept informed of any changes in the legislation in this field.

2. Prohibition of forced labour

The Committee notes that in January 2007, outside the reference period, a new penalty for young offenders called "youth service" came into force. It consists of unpaid work lasting between 20 and 150 hours, to which the young person must agree and which must be appropriate, particularly in view of the offender's personality. The Committee asks for the next report to contain more details on youth

service, focusing in particular on the type of work carried out, for whom it is done and how frequently this penalty is proposed to young offenders.

Prison work

Under the Correctional Treatment in Institutions Act (*Lag om kriminalvård i anstalt*) prisoners are duty bound to work in prison (and to follow appropriate studies or specific courses to treat problems such as drug or alcohol abuse or violence). The Act distinguishes between two types of prison work: work in prison and work for prisoners on parole or pre-release programmes. Prisoners are not obliged to work but if they refuse, they reduce their chances of early release.

Work may be in the industry or service sectors and include, for example, kitchen assistance and building maintenance.

Prisoners working outside prison are covered by the same collective agreements, legislation and other rules as the ordinary staff of the company for which they are working.

Working hours must fall between 7.30 a.m. and 7 p.m. on Monday to Friday (not including public holidays) and total no less than thirty and no more than forty hours per week.

All prisoners who work are paid at a rate that depends on the work done, based on the recommendations of the Swedish Prison and Probation Service. Prisoners who agree to take part in educational activities are also remunerated, as are prisoners to whom it has proved impossible to offer work or prisoners incapable of working or engaging in an activity.

The Committee considers that this system is in conformity with Article 1§2 of the Revised Charter.

3. Other aspects

Privacy at work

It is acknowledged in the report that the existing rules in this area are incomplete. In the event of a dispute, the Labour Court assesses the respective interests of the employer and of the employee.

A committee has been appointed by the Government to propose legislation to protect privacy in the workplace in both the public and private sectors. It is due to complete its work on 1 October 2008. The Committee asks for the next report to describe the outcome, in the light of the observations in the General Introduction to Conclusions 2006 (§§ 13-21).

Restrictions linked to the fight against terrorism

According to the report, the anti-terrorism legislation does not bar individuals from filling certain posts.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 1§2 of the Revised Charter.

Paragraph 3 – Free placement services

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

It notes that County Labour Boards were abolished during the reference period. A plan to reform the management of the public employment service is currently being considered. One of its aims would be to reorganise the involvement of employers' and workers' representatives. The Committee asks to be kept informed of progress on this reform.

It notes that the placement rate of the public employment service was 41% in 2006. The Committee asks for up-to-date information in the next report on the total number of vacancies notified. It also asks what is the average period of time required to fill vacancies.

According to the report there were a total of 325 local branches of the public employment service during the reference period. The Committee asks for the next report to give up-to-date information on the staffing of the public employment service.

According to the report, private employment agencies have a relatively low market share which barely exceeds 2%. Co-operation between these agencies and the public employment service is not

governed by legislation; it is somewhat informal and organised for the most part at local level only.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 1§3 of the Revised Charter.

Paragraph 4 – Vocational guidance, training and rehabilitation

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

As Sweden has accepted Article 9, 10§3 and 15§1 of the Revised Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to guidance and vocational training for persons with disabilities are dealt with under these provisions.

The Committee concluded that the situation with regard to vocational guidance, continuing vocational training and retraining of workers, and to guidance and vocational training for persons with disabilities (Articles 9, 10§3 and 15§1) is in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 1§4 of the Revised Charter.

Article 9 – Right to vocational guidance

The Committee takes note of the information provided in the Swedish report.

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

Vocational guidance within the education system

a. Functions, organisation and operation

The Committee refers to its previous conclusions (Conclusions XIV-2 and 2003) for a general description of guidance services within the education system.

b. Expenditure, staffing and number of beneficiaries

In 2005-2006, there were 984 guidance counsellors working for the compulsory school system, meaning that there was one counsellor for every 500 pupils. In secondary schools, there were a total of 1,012 counsellors, or one counsellor for every 400 pupils.

According to the report, it is difficult to calculate the amount of spending on and the number of beneficiaries of guidance, and the Government does not have access to statistics on the subject. The Committee emphasises how important it is for it to have relevant information to assess the situation and asks all next reports to contain up-to-date information on spending on vocational guidance in the education system and the total number of beneficiaries.

Vocational guidance in the labour market

a. Functions, organisation and operation

The Committee refers to its previous conclusions (*ibid*.) for a general description of the vocational guidance system in the labour market.

b. Expenditure, staffing and number of beneficiaries

In 2006, a total of 84,547 people took part in counselling and placement activities. According to the report, this was a decrease compared to the previous year. The Committee asks what measures are planned to increase the number of beneficiaries of these

guidance services. It also asks how much is spent on vocational guidance in the labour market and how many staff are employed for this purpose. It asks for this information to appear systematically in each report.

Dissemination of information

The Committee notes that there has been no change in the situation which it previously considered (Conclusions 2007) to be in conformity.

Equal treatment of nationals of the other States Parties

The Committee notes that there has been no change in the situation which it previously considered (Conclusions 2003) to be in conformity.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 9 of the Revised Charter.

Article 10 – Right to Vocational Training

Paragraph 1 – Technical and vocational training and the granting of facilities for access to higher technical and university education

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

Secondary and higher education.

In its previous conclusion (Conclusions XVIII-2) the Committee asked what were the pathways between secondary vocational training and university and non-university higher education. In reply the Committee notes from the report that the Swedish education system is designed with a view to promoting lifelong learning. All national and specially designed upper secondary programmes lead to general eligibility to higher education.

Measures to facilitate access to education and their effectiveness

The Committee notes that in 2006 SEK 2,778 million (€ 296 million) was spent on employment training. 59% of all participants found employment after the training.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 10§1 of the Revised Charter.

Paragraph 2 – Apprenticeship

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

The Committee notes that the Upper Secondary Schools Commission has been appointed to review the whole system of upper secondary schooling including apprenticeship training. The Committee wishes to be informed about the results of this exercise.

In reply to its questions asked in the previous conclusion (Conclusions XVIII-2) the Committee notes from the report that the length of apprenticeships is three years, of which a minimum of 30 weeks

must be carried out in a work place. In general, about one third of the working time is allocated to general core subjects and the rest to vocationally-oriented subjects and subjects of the apprentice's choice. Apprentices receive a study grant.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 10§2 of the Revised Charter.

Paragraph 3 – Vocational training and retraining of adult workers

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

Employed persons

In its previous conclusion (Conclusions 2007) the Committee asked what was the length of individual training leave to which the employees were entitled. In this connection it notes from the report that Section 1 of the Employees' Right to Educational Leave Act provides that an employee in public or private service wishing to undergo education is entitled to necessary leave of absence from his employment. The Act does not indicate any limits to the possible duration of such a period.

Unemployed persons

The Committee notes that there have been no changes to the situation which it had previously found to be in conformity with the Revised Charter. It notes from Eurostat that the unemployment rate in Sweden amounted to 7.4% in 2005 and 7.1% in 2006, the EU 15 average being 7.7% in 2006.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 10§3 of the Revised Charter.

Paragraph 4 – Long-term unemployed persons

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

The Committee notes from Eurostat that the long-term unemployment rate amounted to 17.6% in 2005 and 15.2% in 2006 while the EU 15 average was significantly higher (42.1% in 2006). The Committee takes note of the new initiatives of the Government, such as New Start Jobs and Development Guarantee designed to encourage employers to hire the long-term unemployed. The Committee wishes to be informed about the implementation of these measures.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 10§4 of the Revised Charter.

Paragraph 5 – Facilities

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

Fees and financial assistance (Article 10§5 a and b).

The Committee notes from the report that as from 1 July 2006 the entitlement of foreign nationals to study support ceased to be geared to a certain residential standing in Sweden. A foreign national can obtain Swedish study support if he/she has a permanent residence permit in Sweden and has settled primarily for a purpose other than training. The Committee holds that the requirement of 'permanent residence' for foreign nationals to qualify them for student support is not in conformity with Article 10§5 of the Revised Charter.

Training during working hours and efficiency of training (Article 10§5 c and d)

In reply to its previous question whether the time spent on supplementary training at the request of an employer is counted as ordinary working hours the Committee notes that all permissible leave taken by employee counts as working time in Swedish law. As regards the evaluation of vocation training programmes for young

workers, according to the report Swedish schools are evaluated by the National Agency for Education. Foreseeable changes to upper secondary schooling in Sweden include closer co-operation between education and social partners.

Conclusion

The Committee concludes that the situation in Sweden is not in conformity with Article 10§5 of the Revised Charter as foreign students are subject to a permanent residence requirement for entitlement to financial assistance for training.

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

Paragraph 1 – Education and training for persons with disabilities

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

The Committee notes that according to a report of the Ministry of Health and Social Affairs, the number of children and young persons (aged 0-19) with functional impairment is about 108,000. The report indicates that the estimate was made by studying the number of children and young persons receiving various types of supportive measure and financial compensation referring to a functional impairment, as well as children and young persons with self-perceived functional impairment.

Anti-discrimination legislation

The Children and School Students (Prohibition of Discrimination and Other Degrading Treatment) Act (2006:67; hereafter "the Education Anti-Discrimination Act") entered into force in April 2006. It, *inter alia*, prohibits discrimination of children and pupils on the basis of disability in the field of education. The prohibition of discrimination applies to pre-school, compulsory and high school, as well as to specially adapted schools, special needs schools and Sami schools, adult education and Swedish language education for migrants. The Office of the Disability Ombudsman monitors compliance with the Education Anti-Discrimination Act.

In its previous conclusion (Conclusions 2007), the Committee had asked whether a compelling justification for special or segregated educational systems is required by law and whether an effective remedy exists for those who consider themselves to have been unlawfully excluded or segregated or otherwise denied an effective right to education.

In reply to the Committee, the current report clarifies that parents or custodians of pupils with functional impairments or learning difficulties can choose between placing their child in a compulsory school for persons with learning disabilities or in a regular compulsory school. It is the duty of the municipality to offer special

support to pupils in need of it in regular compulsory schools. If an investigation shows a pupil to be in need of special support, an action programme has to be drawn up to identify how the needs should be met. Questions concerning inadequate adjustment of tuition and lack of support for pupils with functional impairment in a particular school can be referred to the National Agency for Education (NAE), which is responsible for surveillance of education under the Education Act (1985:1100). As mentioned above, questions relating particularly to discrimination based on disability in the field of education may be brought to the attention of the Office of the Disability Ombudsman.

As regards the Committee's request for information on case law and complaints lodged with the appropriate institutions, the report indicates that only a small number of appeals is made concerning pupils' opportunities for participating in regular education as a school or municipality has very few legal possibilities of placing a pupil outside the regular school system against the wishes of the pupil's parents. Moreover, for compulsory school for pupils with learning disabilities there is legislation entitling the pupil's custodian to decline a place offered in a special school (the Experimental Activity (Increased Parental Influence on the Schooling of Children with Learning Disabilities) Act, 1995:1249). Decisions concerning admission to special school can be appealed to the Board of Appeals for Education. However, the Special Schools Authority endeavours to ensure that admission to special school is based on a consensus between school, pupil and parents, and in practice a child is never admitted to special school against its custodians' wishes. Since its formation at the beginning of the 1990s, the Appeals Board for Education has never had cases where custodians have opposed admission to special school. Also the decision to place a pupil in a special teaching group within regular education can be appealed. About 10 cases annually are referred to the Appeals Board of the NAE concerning placement in a special teaching group.

As regards discrimination on the basis of disability at school in particular, the report indicates that since the entry into force of the Education Anti-Discrimination Act (from April 2006 until August 2007), a total of 89 complaints were filed with the Disability Ombudsman, who has not yet referred any case to conciliation or litigation. In this regard, the report highlights that the Education Anti-Discrimination Act does not cover issues concerning inadequate

adjustment of tuition or support for pupils with functional impairment. Such issues must be handled by the NAE. However, the majority of cases reported to the Ombudsman so far have included elements concerning lack of adjustment and support. Of the 89 complaints received, 60 have been struck off and transferred to the NAE for this reason. The Committee asks the next report to inform it about the outcome of all these complaints (those transferred to the NAE and those pending before the Disability Ombudsman).

As regards the NAE, it also notes that, in 2006, it received 1,007 complaints concerning deficiencies in schools, preschool activity and caring services for school children. In 24% of the cases, the Agency levelled criticism against the mandator of the school concerned. The report highlights that the NAE is not formally empowered to revise decisions made by a municipality or school. The Committee asks what happens in practice when the NAE confirms the existence of deficiencies in schools which affect the education of persons with disabilities.

The Committee notes that the Government has appointed a Commission to develop the inspection activities of the NAE (dir. 2007:80). The Committee asks the next report to inform it about the results of this initiative.

Education

While noting that mainstreaming is ensured in compulsory schooling, in its previous conclusions (Conclusions 2003 and 2007), the Committee had asked for more information on its modalities. In this regard, the Committee notes from the report that:

– Pupils with functional impairment attending regular compulsory or upper secondary school have the same syllabi as other pupils. However, the Education Act entitles all pupils to the support they need in order to achieve the targets of the school system. This applies both to pupils with difficulties stemming from functional impairment and pupils who have difficulty in achieving the targets for other reasons. Moreover, if a compulsory school pupil cannot obtain instruction reasonably adapted to his/her situation and aptitudes, the governing body may resolve on a modified study programme of the pupil. It is the responsibility of the governing body to ensure that the pupil

with a modified study programme receives an education equivalent, as far as possible, to other education provided at the same school. Pupils who are found not to measure up to the objectives of the syllabi even with such support and adaptations can be offered a place in a compulsory school for pupils with learning disabilities or in a special school.

– Individual development plans are crafted for all students (with and without disabilities, in compulsory schools, compulsory schools for pupils with learning disabilities and special schools). If a pupil is in need of special supportive measures under the Compulsory School Ordinance (1994:1194), the head teacher of the school concerned must also ensure that an action programme is drawn up, indicating what the needs are, how they are to be provided for and how the measures taken are to be followed up and evaluated.
– Municipalities have to offer special support to pupils in regular education who need it. Such support must firstly be provided within the class or group to which the pupil belongs, but can be provided in a special teaching group where there are particular reasons for so doing. In cases of this kind, the pupil and the pupil's custodian must be consulted. In upper secondary school, special needs teaching can be arranged within the class for students in need of special support, and special classes may be formed for students who, on account of hearing or vision impairment, mobility impairment or other pronounced study impediments, are unable to follow the ordinary instruction. One form of supportive input in compulsory and upper secondary school may be for the student to have the services of a student assistant. Such an assistant is hired by the educational mandator. He/she is not directly linked to the student.
– Testing modalities are adjusted to take account of disability. Teachers decide how this affects the assessment. Information concerning the test procedure has no bearing on the mark which the pupil is awarded subsequently. The fact that testing modalities are adapted may be known within individual schools. No data on the matter is collected at the national level.
– Teachers in compulsory and upper secondary school are allowed to disregard individual targets which the pupil should have achieved, if there are particular reasons for doing so.

"Particular reasons" are personal circumstances of a more than temporary nature which directly impede the pupil from achieving a certain target, e.g. physical functional impairment.

– General teacher training incorporates special needs education as an integral component. In addition, the Government has decided to introduce (in the autumn term 2008) a special needs teacher education which will provide in-depth knowledge of linguistic development and of effective methods of stimulating pupils' reading, writing and arithmetical ability at an early age. This teacher education programme will be of three terms duration and will be open to applicants with teaching certification. The Committee asks the next report to provide information on the impact of the new programme.
– The Committee also notes that the NAE has been instructed by the Government to carry out an inventory of physical access in compulsory and upper secondary schools. A report on the remit is due by the end of 2008. The Committee asks the next report to contain information in this regard.

As to the Committee's question concerning the relative progression rates for children and pupils with disabilities having attended regular compulsory education and upper secondary schools, the report reiterates that most pupils with functional impairment are taught in regular types of school, but Sweden does not maintain statistics concerning students with functional impairment receiving regular instruction in compulsory or upper secondary school. In this regard, the Committee recalls that that when it is generally acknowledged that a particular group is or could be discriminated against, the state authorities have a responsibility for collecting data on the extent of the problem (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27). The gathering and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of rational policy (ERRC v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23).

With respect to special education, in reply to the Committee, the report clarifies that:

– Special schools for pupils with learning disabilities can have municipal, county council or independent mandators. The State indicates goals and rules for education and carries out

surveillance and follow-up. Special schools, which are for deaf or hearing-impaired pupils at compulsory school level, come under State mandatorship. There are six of them, and they are administered by a national authority accountable to the Ministry of Education, namely SPM, which is primarily responsible for this education.

- The Government adopts syllabi for compulsory school, Sami school and special school. The NAE decides syllabi for upper secondary school, compulsory school for pupils with learning disabilities and upper secondary school for students with learning disabilities. Individual development plans and other plans for the individual students are drawn up by the mandator concerned.
- Special compulsory schools follow the same curriculum as regular schools and most of the syllabi for special schools are the same as for regular schools. Only those for pupils attending these schools who have hearing impairment and learning disabilities are different (they are as those for pupils with learning disabilities as explained below). However, the timeframe for achieving the goals set in the syllabi of special schools is a year longer than that in regular schools.
- Obligatory school for pupils with learning disabilities (corresponding to regular compulsory school) comprises compulsory school and training school. The syllabi in compulsory school for pupils with learning disabilities differ from those of regular education. The syllabi express goals indicating the level of achievement which the pupils must have attained, according to their capabilities, when they leave school.
- Training school is for pupils who, on account of their learning disabilities, are not judged capable of achieving the goals of compulsory school for pupils with learning disabilities. Training school has syllabi for five major subject fields: aesthetic activity, communication, motor skills, daily activities and reality perception. Mother tongue instruction in training school comes within the communication subject field.
- Marks for special school pupils not taking the syllabi of compulsory school for pupils with learning disabilities have the same value as the marks obtained by pupils in regular compulsory school. Pupils attending compulsory school for pupils with learning disabilities shall, on completion of their schooling, be given a certificate of the education they have undergone. If the

custodian so requests, a general educational assessment can be added to the certificate. If a pupil attending compulsory school for pupils with learning disabilities or the pupil's custodian so requests, marks are to be awarded. In cases where a leaving certificate is awarded, the pupil's achievement must be assessed in relation to the goals indicated by the syllabus for each subject. Marks are awarded on a two-point scale, instead of the three-point scale for regular compulsory schooling, and cannot be invoked in applications for admission to regular upper secondary school. No marks are awarded in training school, but referencing and evaluation must nevertheless proceed continuously, the point of reference being the goals defined in the individual study plan drawn up in consultation with the student's custodian.

The Committee asks what are the remedies available for pupils who attended compulsory school for pupils with learning disabilities and whom are denied the possibility to apply for higher education within the regular education system.

- The proportion of students leaving special school with at least pass marks in all three core subjects, and thus eligible to apply for regular upper secondary school, has been running at about 40% in recent years, but in 2006 it fell to 27%. 90% of the students leaving special school in 2006 went on to the National Upper Secondary School for the Deaf or the National Upper Secondary School for the Hard of Hearing. The Committee reiterates that it also wants to know what proportion of students enter the open labour market after compulsory school.
- Surveillance of the quality of special education is primarily conducted through the educational inspection activities of the NAE, in the same way as for regular education.

The Committee notes that according to a report of the NAE (Skolverket 2006:288), approximately 14,000 pupils attended compulsory school for persons with learning disabilities in 2006/07, which corresponds to about 1.4% of all compulsory school pupils. In 2007 there were about 8,200 students attending upper secondary school for persons with learning disabilities. According to the NAE, most pupils who are deaf or hard of hearing attend ordinary compulsory school. Very few attend special school (548 in 2007).

The Committee notes that the Government has taken several measures to strengthen teachers' competence, including special

funding for in-service training in special needs education. In addition, the Government has also appointed a special investigator to review the teacher competence provisions of the Education Act, the aim being to strengthen the quality of schools and preschool education and to improve pupils' goal achievement (dir. 2006:140). The special investigator's proposals and deliberations are to be presented in 2008. The Committee wishes to be informed about the outcome of this initiative.

Vocational training

The Committee notes from the report that no changes have occurred since its previous conclusion (Conclusions 2007) and therefore refers to it for a description of training facilities and vocational rehabilitation services for persons with disabilities in Sweden.

In its previous conclusion, the Committee had noted that non discrimination with respect to the mainstreaming of persons with disabilities in higher education is guaranteed through the Post-Secondary Students (Equal Treatment) Act (2001:1286). It asked for information on any relevant case law of the Disability Ombudsman with respect to higher education. The report indicates that no discrimination cases have been filed with the Disability Ombudsman concerning higher education.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 15§1 of the Revised Charter.

Paragraph 2 – Employment of persons with disabilities

The Committee takes note of the information provided in Sweden's report as well as in the additional information submitted on 16 October 2008.

According to a special survey supplementing Sweden's regular Labour Force Survey, during the reference period, 15.7% of the population had a functional impairment (about 918,600 persons). Of these, 9.5% (about 556,000 persons) judged their work capacity to be reduced.

In the fourth quarter of 2006, the employment intensity among persons with functional impairment and reduced work capacity was 51.7% and unemployment among persons with functional impairment and reduced work capacity was 8.7% (4.2 percentage units higher than for the total workforce between the ages of 16 and 64). Figures show that unemployment among persons with functional impairment increased more since 2002, in percentage terms, than for the population as a whole. However, the report also highlights that the proportion of persons with functional impairment entailing reduced work capacity enrolled with the Public Employment Service has risen from 14% in the first quarter of 1996 to nearly 22% in the first quarter of 2007.

Anti-discrimination legislation

While recalling that it has considered the situation in Sweden to be in conformity with the requirements of Article 15§2 of the Revised Charter, the Committee refers to its previous conclusions (Conclusions 2003 and 2007), for a description of the relevant legislation regulating non-discrimination of persons with disabilities in employment, i.e. the Act Prohibiting Discrimination at Work of Persons with Functional Impairment (1999:132) and the Prohibition of Discrimination Act (2003:307).

The Committee further notes that the Work Environment Act (1977:1160) lays down that "The employer shall make allowance for the employee's special aptitudes for the work by modifying working conditions or taking other appropriate measures. In the planning and arrangement of work, due regard shall be paid to the fact that individual persons have differing aptitudes for the tasks involved." More detailed Provisions on adjustment for disability and on rehabilitation are contained in Provisions AFS 1994:1 of the Work Environment Authority. Questions concerning adjustment for disability are also addressed in the Provisions of the Work Environment Authority on Work with Display Screen equipment (AFS 1998:5). Official responsibility for matters of adjustment and rehabilitation is vested in several agencies, the Work Environment Authority among them.

In this regard, the Committee reiterates its previous questions concerning the implementation of the reasonable accommodation obligation as they were not addressed in the current report, i.e. :

a. How is the reasonable accommodation obligation implemented in practice?
b. Has the reasonable accommodation obligation given rise to cases before courts?
c. Has the reasonable accommodation obligation prompted an increase in employment of persons with disabilities in the open labour market?

As to case law concerning discrimination in general against persons with disabilities in the field of employment, the Committee has taken note of the two cases decided by the Labour Court and the four extra-judicial settlements concluded by the Disability Ombudsman during the reference period. The Committee asks the Government to continue providing such relevant information.

Measures to promote employment

The Committee refers to its previous conclusions (Conclusions 2003 and 2007) for a description of the measures to promote employment, namely subsidised employment, special hiring support (SIUS), the "Special Start-Up programme for jobseekers with disabilities wishing to start their own business and sheltered employment (with public employers – OSA- and through the *Samhall* group).

The Committee notes from the report that during 2006, an average of 59,958 persons with functional impairments monthly had wage subsidised employment and 5,124 had OSA employment. The report also highlights that the sexes were unevenly balanced in these programmes as men were overrepresented in relation to their share of the unemployed population with functional impairment, accounting for 62% of newly hired wage-subsidised employees and 74% of newly hired OSA employees. In this regard, the Committee asks whether any measures are envisaged to promote further employment of women with disabilities.

The Committee also notes that in 2006, 2,600 persons left wage-subsidised employment for non-subsidised employment. This was 4.4% of the average number of participants. The commonest hiring was continued hiring by the same employer or indefinite term hiring. From OSA, 2.1% of the average number of participants changed to non-subsidised employment.

As to the new model for integrating people with disabilities into the labour market, which was launched in 2006, the report indicates that an average of about 65,000 persons took part in special initiatives for persons with functional impairment entailing reduced work capacity but does not provide any other information concerning the impact of such special initiatives on the labour market. The Committee therefore asks the next report to do so.

In reply to the Committee, the report confirms that trade unions are active in sheltered employment facilities.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 15§2 of the Revised Charter.

Paragraph 3 – Integration and participation of persons with disabilities in the life of the community

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

Anti-discrimination legislation and integrated approach

In its previous conclusion (Conclusions 2007), the Committee noted that the legislation described (the Disability Ombudsman Act (1994:749), the Act Prohibiting Discrimination at Work of Persons with Functional Impairment (1999:132), the Post-Secondary Students (Equal Treatment) Act (2001:1286), and the Discrimination (Prohibition) Act (2003:307)) prohibited discrimination on the ground of disability. It found that this non-discrimination legislation covered both the public and private spheres in fields such as housing, transport, telecommunications and cultural and leisure activities, and offered effective remedies for those who had been treated unlawfully.

Responsibility for supervising the implementation of this legislation rests with the Disability Ombudsman. The Committee asked for information on the case-law relating to issues dealt with under Article 15§3. The report mentions a case brought before the courts during the reference period by a disabled man who was refused entry to a restaurant. He was awarded 15,000 Swedish kroner (SEK) (about € 1,500) in damages but an appeal was filed against this ruling and is

still pending. The report also refers to five cases decided through an out-of-court settlement brokered by the Ombudsman, with compensation varying between SEK 10,000 (about € 1,000) and SEK 15,000 (about € 1,500).

Consultation

The Committee notes that there has been no change in the situation which it previously considered (Conclusions 2007) to be in conformity.

Forms of financial aid to increase the autonomy of persons with disabilities

The Committee asks for the next report to provide details on all benefits and other forms of financial assistance available to persons with disabilities.

Measures to overcome obstacles

Technical aids

The Committee refers to its statement of interpretation on Article 15§3 in the General Introduction to these conclusions and notes that there has been no change in the situation which it previously considered (Conclusions 2007) to be in conformity.

Communication

In 2007, the Government appointed a committee to prepare new legislation on languages, one of whose tasks was to draw up special provisions on sign language. The Committee asks for the next report to state what the legal status of sign language is.

Mobility and transport

In 2006, the Government tabled a bill for the national road and rail authorities to devise a joint national action programme for the long-term development of public transport. The programme included measures to improve disabled access to transport.

The report describes all the measures taken during the reference period under a programme to promote disabled access to road, rail, sea and air transport (a special road and rail programme, improved

access to transport and the construction of special platforms, reserved spaces and equipment).

Housing

Amendments were made to the 1987 Planning and Building Act to encourage the elimination of all obstacles that could be easily removed to improve access to public areas and buildings. Under the national action plan on policy for the disabled (1999/2000:79), all such obstacles should be removed by the end of 2010.

Culture and leisure

In its 2006 report, the National Heritage Board found that considerable progress had been made in improving access for the disabled to regional museums.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 15§3 of the Revised Charter.

Article 18 — Right to engage in a gainful occupation in the territory of other parties

Paragraph 1 — Applying regulations in a spirit of liberality

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

The Committee notes more specifically that a bill is being prepared to reform immigration rules and the formalities connected with foreigners' engaging in a gainful occupation in Sweden. The main intention of this bill is to allow students and asylum seekers, under certain conditions, to apply for a work permit and to make it easier to obtain a permanent residence permit. The Committee asks to be informed of the progress of this bill.

According to the report, 6,755 applications for work permits from nationals of States Parties not covered by Community law were made in 2003, and 5,207 of these were granted. In 2005, 816 applications of this sort were made and 709 were granted, while in 2006, 1,226 were made and 1,079 were granted. The Committee notes that there was a significant decrease in the number of work permit applications filed and, consequently, of the number of those granted between 2003 and 2005.

It notes however that the number of permits granted increased during the reference period.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 18§1 of the Revised Charter.

Paragraph 2 – Simplifying formalities and reducing dues and taxes

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

Administrative formalities

According to the report, under a new law adopted in 2005, foreign students are now entitled to work in Sweden without obtaining a work permit for as long as their residence permit is valid.

Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents[1] has moreover been transposed into domestic law to enable nationals of third countries to move around freely within the European Union. Under certain conditions, the latter may be granted special, long-term-resident status provided that they have a permanent residence permit and have been living in Sweden for at least five years.

In reply to the Committee, the report states that both initial work permit applications and applications for renewal may now be made on line, through the Migration Board website.

The report also confirms that it may be possible, in certain cases, to award permits for a longer period than at present, particularly under international exchange programmes (where the normal limit is 48 months), depending on the duration of the work on offer or on approval by the County Labour Board.

The Committee asks for up-to-date information on waiting times for work permits.

As to residence permits, the Committee refers to its conclusion under Article 18§1 of the Revised Charter concerning the current bill to reform immigration rules.

Chancery dues and other charges

The Committee previously noted (Conclusions 2005) that charges had been introduced for both residence and work permit applications. It asked what the justification was for charging a fee at the application stage and whether it could be waived or reduced in certain circumstances, and reserved its position on this point.

In reply, the report states that charges were introduced to cover administrative costs. In some cases, such charges may be waived or

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[1] Official Journal No. L 16 of 23/01/2004, pp; 44-53.

reduced, particularly where there are several applications from the same family.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Sweden is in conformity with Article 18§2 of the Revised Charter.

Paragraph 3 – Liberalising regulations

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

Access to the national labour market

The Committee previously concluded (Conclusions 2005) that the situation in Sweden was not in conformity with Article 18§3 because the conditions for granting temporary and permanent work permits were too restrictive since temporary permits were granted for a specific job with a specific employer, in cases of shortages in the workforce, and permanent permits were granted only to workers with exceptional qualifications.

According to the report, a draft bill is being prepared to reform immigration rules and the formalities connected with engaging in a gainful occupation in Sweden. The main intention of this bill is to allow students and asylum seekers to be entitled under certain conditions to apply for a work permit and to make it easier to obtain a permanent residence permit.

The Committee notes that the draft bill makes no change to the rule that temporary work permits may be issued only for a specific job, with a specific employer, in cases of shortages in the workforce. The Committee asks again to be informed of developments. As things stand and given that there has been no change in the relevant legislation or practice, it concludes that the situation is not in conformity with Article 18§3 of the Revised Charter.

Exercise of the right to employment

The Committee notes that there has been no change in the situation, which it previously (Conclusions 2005) found to be in conformity.

Consequences of loss of job

The Committee previously concluded (Conclusions 2005) that the situation was not in conformity with Article 18§3 of the Revised Charter because the residence permits of foreign workers who had lost their job could not be extended to give them enough time to look for a new job.

According to the report, one of the provisions of the new law would entitle nationals of third-party countries who have lost their job to the extension of their residence permit to enable them to look for a new one. If no new work permit is granted within three months of the loss of job, the person concerned may apply for a further extension of his or her residence permit. The Committee asks to be informed of developments. Until a change in the legislation is made, it concludes that the situation in Sweden is still not in conformity with Article 18§3 of the Revised Charter.

Conclusion

The Committee concludes that the situation in Sweden is not in conformity with Article 18§3 of the Revised Charter on the grounds that:

– the rules governing access to the labour market for nationals of States Parties are too restrictive;
– the residence permits of foreign workers who have lost their job cannot be extended to give them enough time to look for a new one.

Paragraph 4 – Rights of nationals to leave the country

The Committee takes note of the information provided in Sweden's report and notes that there has been no change in the situation which it previously (Conclusions 2005) found to be in conformity with the Revised Charter.

Conclusion

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

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

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

Equal Rights

The Equal Opportunities Act 1991:433 was amended during the reference period so as also to include persons applying for or completing work experience. Thus the rules concerning prohibition of discrimination, harassment, invalidity of agreements and damages are also applicable to persons in such a situation. A person who, without being an employee, does work in a workplace in an outsourced capacity shall also be deemed an employee.

The scope for derogation of the ban on discrimination has also been reduced. The previous exception "for non-profit or other special interest" has been repealed. The new exception applies in connection with decisions concerning hiring, promotion and training for promotion and is worded in such a way that "a certain gender shall be necessary by reason of the nature of the work or the context in which it is done". The exception is very narrow and the employer must have strong reasons for invoking it.

In addition, it is also prohibited to order an employee to exercise discrimination.

In addition to the Equal Opportunities Act, the Discrimination (Prohibition) Act (2003:307) concerning gender discrimination was adopted. As from 2005 this Act includes a ban on gender discrimination. For the purposes of the Act, discrimination comprises direct and indirect discrimination, harassment and instructions to discriminate. Under this Act, discrimination on grounds of sex is prohibited in connection with

– labour market policy activities,
– the start-up or conduct of business activity,
– professional practice,
– membership of and/or participation in an employees' organisation, an employers' organisation or professional organisation or benefits conferred by such an organisation,

– the professional supply of goods, services and housing.

Section 7 of the Discrimination (Prohibition) Act (DFL) prohibits gender discrimination with regard to professional practice, e.g. authorisation, registration or suchlike which is needed or can be of importance for the practice of a particular profession.

The Committee will examine the amendments to the Parental Leave Act prohibiting discrimination during its next examination of Article 27.

The Committee recalls that in its previous conclusion (Conclusion 2006) it found the situation not to be in conformity with the Revised Charter because it found that the employment insurance legislation indirectly discriminated against women working part-time. Social security legislation requires a minimum working-time of three hours per day or 17 hours per week to be entitled to unemployment insurance. Part-time contracts the length of which is below such minimum mostly concern women.

According to the report the number of working hours that has to be completed in order to qualify for unemployment insurance has a historical link to collective agreements between the social partners, e.g. on pensions and sickness benefit additional to those received from the official system. The reason and the cause behind these conditions is the thought that in order to qualify for benefit the applicant must have had a certain connection to the labour market. In 2006, 23% of the labour force worked part time but only 5 per cent of them worked less than 20 hours per week. Women work more part time than men. In 2006, 36% of the female labour force worked part time but only 6% worked less than 20 hours per week. The report argues that this means that most of them are covered by the unemployment insurance in one way or another and that the numbers of workers not covered by the unemployment insurance system is very limited. Those who are not entitled to unemployment benefit have the right to social benefits if they cannot support themselves.

The Committee finds that the situation did not change during the reference period. The situation is therefore not in conformity with the Revised Charter.

Position of women in employment and training

Wage disparities have largely remained the same since the early 1990s. According to wage statistics, women's pay is on average 84% of men's pay (when comparing full time wages). If women's and men's differing distribution according to age, level of education, working hours, sector and occupational group is taken in to account the difference becomes smaller: in 2006 the average female wages were 93% of men's wages after standard weighting, which is a small improvement compared to previous years.

According to the Equal Opportunities Act (1991:433) each employer must carry out a survey and analysis of wage disparities between women and men and this includes an obligation to assess whether any existing wage disparities are directly or indirectly related to gender. The action plan for equal pay that the employer must produce each year is to include information on what wage adjustments and other measures need to be undertaken to achieve equal pay for equal work and for work of equal value.

The gender pay gap is an issue for trade unions and employers when setting wage rates. The Mediation Institute has directions highlighting the importance of constructing central agreements in such a way that they facilitate the work of the local parties to achieve gender equal pay.

As regards the possibility of wages comparisons across firms the report states that Swedish case law shows no example of an applicant having succeeded with such a comparison.

The Equal Opportunities Ombudsman is currently examining the wage mapping of the biggest employers (in the private sector), who between them have a million employees. The Committee asks to be informed of the results of the study.

The report indicates that one of the most significant factors having an impact upon the pay gap is the segregation of the labour market, primarily at the horizontal level, almost 40 per cent of women work in health, education and public administration, compared to 20 per cent of men.

Measures to promote equal opportunities

The report mentions refers to the "gender desegregation" project being carried out by the Swedish Public Employment Service, the Committee wishes to receive information on the result of this project.

Conclusion

The Committee concludes that the situation in Sweden is not in conformity with Article 20 of the Revised Charter on the ground that the employment insurance legislation indirectly discriminates against women working part-time.

In accordance with Article 21-1§3 of the Committee's Rules of Procedure, a dissenting opinion of Mrs C. Kollonay Lehoczky, member of the Committee, is appended to this conclusion.

Article 25 – Right of workers to the protection of their claims in the event of the insolvency of their employer

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

In reply to the Committee, the report states that since 2004 claims have been limited to a maximum, index-linked sum, estimated at 161,200 Swedish kroner (SEK, which is about € 17,000) in 2006. The duration of the wage guarantee has also been extended, from six to eight months.

The Committee again asks the next report to provide information (or eventually an estimate) on the average time that elapses between the filing of a claim and the payment of any sums owed as well as on the percentage of claims satisfied through the wage guarantee or privilege systems.

In reply to the Committee, the report states that the reason why wage claims are usually below the maximum amount and often relate to far shorter periods than six months is that there are now many more incentives for workers to take immediate action to protect their claims as soon as their employers encounter financial difficulties and that trade unions are more actively involved in these matters.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 25 of the Revised Charter.

Dissenting opinion of Mrs C. Kollonay Lehoczky

Conclusion relating to Article 20

I cannot agree with the stance of the majority of the Committee where it finds that the situation in Sweden is not in conformity with Article 20 of the Revised Charter due to the indirect discrimination in its employment insurance legislation as much as it requires a minimum working-time of three hours per day or 17 hours per week to be entitled to unemployment insurance.

The exclusion is relevant to persons who undertake so negligible number of weekly working hours that, without any data on the composition of such persons there is no ground to suppose that they include disproportionately more women, furthermore the exclusion might be based on objective reasonable grounds. (They might be students or persons with similarly lacking intention to seriously engage in employment, creating a group of insignificant number of persons in a balanced gender-mix).

Article 20 provides that the state undertakes „to take appropriate measures to ensure or promote the application of the right of right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex. It encompasses both obligations of conduct and of results; obligations of conduct in so far as a state must demonstrate that it is taking all possible steps to promote full equality and of results in so far as it must demonstrate that measurable progress is being made in achieving the aim. Therefore In the light of the significant steps and achievements made by Sweden in promoting the effective exercise of the right to equal treatment and equal opportunities of women the vague likelihood of such an indirect discrimination cannot be the basis for a conclusion of non-conformity.

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