# European Social Charter (revised)

European Committee of Social Rights

Conclusions 2008 – Volume 1
(Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Ireland, Italy)

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# General Introduction

**General Introduction**

1. The European Committee of Social Rights, established by Article 25 of the European Social Charter, composed of:

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assisted by Mr Régis BRILLAT, Executive Secretary of the European Social Charter,

with the participation of Mr Alexandre EGOROV, representative of the International Labour Organisation,

between December 2007 and October 2008 examined the reports on the application of the Revised European Social Charter by Albania, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Italy, Lithuania, Malta, Moldova, the Netherlands[1], Norway, Portugal, Romania, Slovenia and Sweden. Andorra and Ireland did not submit a report within the deadline for the examination.

2. At the 1005th meeting of the Ministers' Deputies on 26 September 2007 the Committee of Ministers held an election to fill the seat left vacant following the resignation of Ms Beatrix KARL (Austrian) on 28 January 2007. Ms Lyudmila HARUTYUNYAN (Armenian) was elected and took up office immediately for a term of office ending on 31 December 2010.

On 23 September 2007, Ms Ersiliagrazia SPATAFORA (Italian) resigned from the Committee having been a member since 2006.

At the 1016th meeting of the Ministers' Deputies on 30 January 2008 the Committee of Ministers held an election to fill the seat left vacant following the resignation of Ms SPATAFORA. Ms Annalisa CIAMPI (Italian) was elected and took up office immediately for a term of office ending on 31 December 2010.

3. The function of the European Committee of Social Rights is to assess the conformity with this treaty of the law and practice of states. Its conclusions appear in the following chapters by State. They are also available on the website of the Council of Europe www.coe.int and in the case law database that is also available on this site. A summary table of the Committee's Conclusions 2008 as well as the state of signature and ratification of the 1961 European Social Charter and the 1996 Revised European Social Charter appears below.

4. The conclusions adopted by the Committee in October 2008 concern the accepted provisions of the following articles of the

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[1] Including the Netherlands Antilles and Aruba which are bound by the 1961 Charter. However, the Netherlands did not submit a report in respect of Aruba.

Revised Charter belonging to the thematic group "Employment, training and equal opportunities":

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

Statements of interpretation

5. The Committee makes the following statements of interpretation:

6. Statement on the burden of proof in discrimination cases

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.

7. Relationship Article 1§4 – Article 15§1

The Committee considers that since Article 15§1 covers a broader range of rights besides the right to vocational training of persons with disabilities a conclusion of non-conformity under this provision should be taken up under Article 1§4 only where the ground of non-conformity is linked specifically to vocational training.

8. Statement on loss of unemployment benefits due to refusal of offered job or training (Article 12§1 and Article 1§2)

The Committee considers that in general the conditions to which the payment of unemployment benefits is subjected, including any obligations to take up offered employment, should be assessed under

Article 12§1 of the Charter (or Article 12§3 in the case of new developments). However, in certain cases and under certain circumstances the loss of unemployment benefits on grounds of refusal to accept offered employment could amount, indirectly, to a restriction on the freedom to work and as such the situation would be assessed under Article 1§2.

9. Statement on technical aids and support services (Article 15§3)

Under Article 15§3 states undertake to promote the full social integration and participation in the life of the community of persons with disabilities, in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure. To give meaningful effect to this undertaking:

– Mechanisms must be established to assess the barriers to communication and mobility faced by persons with disabilities and identify the support measures that are required to assist them in overcoming these barriers.
– Technical aids must be available either for free or subject to an appropriate contribution towards their cost and taking into account the beneficiary's means. Such aids may for example take the form of prostheses, walkers, wheelchairs, guide dogs and appropriate housing support arrangements.
– Support services, such as personal assistance and auxiliary aids, must be available, either for free or subject to an appropriate contribution towards their cost and taking into account the beneficiary's means.

10. Statement on Article 24

The Committee applies its general stance on the burden of proof (see above) also in relation to cases of termination of employment other than those based on discrimination while examining Article 24 of the Revised Charter.

11. Statement on Article 25

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 contract.

General Questions from the Committee

12. The Committee addresses the following general question to all the States Parties and invites them to provide replies in the next report on the provision concerned:

13. Article 1§2

The Committee draws attention to the existence of forced labour in domestic environment (see judgment of the European Court of Human Rights in the case of Siliadin v. France, 26 July 2005). It asks for information on the legal provisions adopted to combat such types of forced labour as well as measures taken to implement them.

14. Article 24

The Committee asks the next report to describe the rights of workers in cases of unilateral amendment by the employer to the substantive conditions of the employment contract.

Next report

15. The next reports due before 31 October 2008 concern the accepted provisions of the following Articles belonging to the thematic group “Health, social security and social protection”: Articles 3, 11, 12, 13, 14, 23 and 30.

## Summary of the Committee's Conclusions

| Article | AL | AR | AZ | BE | BU | CY | ES | FI | FR | GEO | IT | LI | MA | MOL | NE | NO | POR | RO | SLE | SW |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Article 1.1 | 0 | 0 | 0 | + | + | + | + | + | + | 0 | 0 | + | + | 0 | + | + | + | - | + | + |
| Article 1.2 | 0 | 0 | 0 | 0 | 0 | - | - | - | - | 0 | - | - | - | - | + | 0 | - | - | + | + |
| Article 1.3 | 0 | + | 0 | - | + | + | + | + | + | + | - | + | + | + | + | 0 | + | - | 0 | + |
| Article 1.4 | 0 | + | 0 | - | - | - | - | 0 | + | 0 | 0 | - | - | - | 0 | + | + | - | - | + |
| Article 9 | NA | NA | 0 | - | NA | + | - | + | 0 | NA | 0 | - | - | - | + | + | + | + | + | + |
| Article 10.1 | NA | NA | NA | + | NA | + | + | + | 0 | NA | + | + | - | NA | + | + | + | NA | - | + |
| Article 10.2 | NA | NA | NA | + | NA | + |  | - | + | + | + | 0 | - | NA | + | + | + | NA | - | + |
| Article 10.3 | NA | NA | NA | - | NA | - | + | 0 | 0 | NA | + | - | + | NA | + | + | + | NA | - | + |
| Article 10.4 | NA | NA | NA | 0 | NA | - | + | + | 0 | 0 | 0 | + | + | NA | 0 | - | 0 | NA | + | + |
| Article 10.5 | NA | NA | NA | - | NA | 0 | NA | - | - | NA | + | + | - | NA | 0 | - | - | NA | - | - |
| Article 15.1 | NA | NA | NA | - | NA | + | - | + | - | NA | 0 | + | - | - | 0 | - | + | - | 0 | + |
| Article 15.2 | NA | - | NA | - | NA | 0 | - | + | 0 | NA | - | - | - | - | 0 | + | 0 | 0 | 0 | + |
| Article 15.3 | NA | 0 | NA | - | NA | 0 | - | - | 0 | 0 | 0 | - | 0 | NA | 0 | - | 0 | NA | 0 | + |
| Article 18.1 | NA | 0 | NA | - | NA | NA | NA | - | - | + | - | + | NA | NA | + | NA | 0 | NA | - | + |
| Article 18.2 | NA | 0 | NA | 0 | NA | NA | NA | + | + | + | - | NA | NA | NA | + | NA | + | NA | NA | + |
| Article 18.3 | NA | 0 | NA | 0 | NA | NA | NA | - | + | + | + | NA | NA | 0 | - | NA | + | - | - | - |
| Article 18.4 | NA | + | NA | + | + | + | NA | + | + | 0 | + | 0 | + | + | + | NA | + | + | + | + |
| Article 20 | 0 | 0 | - | + | 0 | - | + | + | + | 0 | + | + | 0 | 0 | + | + | - | + | - | - |
| Article 24 | - | + | + | NA | - | - | + | - | + | NA | - | + | - | + | 0 | + | + | 0 | + | NA |
| Article 25 | 0 | NA | NA | + | 0 | NA | + | + | + | NA | NA | 0 | + | NA | + | + | + | 0 | + | + |

\+ Conformity  - Non conformity  0 Deferral  NA Non accepted provision

**Member States of the Council of Europe**
**and the European Social Charter**
Situation at 7 October 2008

| MEMBER STATES | SIGNATURES | RATIFICATIONS | Acceptance of the collective complaints procedure |
|---|---|---|---|
| **Albania** | 21/09/98 | 14/11/02 | |
| **Andorra** | 04/11/00 | 12/11/04 | |
| **Armenia** | 18/10/01 | 21/01/04 | |
| **Austria** | 07/05/99 | **29/10/69** | |
| **Azerbaïjan** | 18/10/01 | 02/09/04 | |
| **Belgium** | 03/05/96 | 02/03/04 | 23/06/03 |
| **Bosnia and Herzegovina** | 11/05/04 | 07/10/08 | |
| **Bulgaria** | 21/09/98 | 07/06/00 | 07/06/00 |
| **Croatia** | **08/03/99** | **26/02/03** | 26/02/03 |
| **Cyprus** | 03/05/96 | 27/09/00 | 06/08/96 |
| **Czech Republic** | 04/11/00 | **03/11/99** | |
| **Denmark** * | 03/05/96 | **03/03/65** | |
| **Estonia** | 04/05/98 | 11/09/00 | |
| **Finland** | 03/05/96 | 21/06/02 | 17/07/98 **X** |
| **France** | 03/05/96 | 07/05/99 | 07/05/99 |
| **Georgia** | 30/06/00 | 22/08/05 | |
| **Germany** * | 29/06/07 | **27/01/65** | |
| **Greece** | 03/05/96 | **06/06/84** | 18/06/98 |
| **Hungary** | 07/10/04 | **08/07/99** | |
| **Iceland** | 04/11/98 | **15/01/76** | |
| **Ireland** | 04/11/00 | 04/11/00 | 04/11/00 |
| **Italy** | 03/05/96 | 05/07/99 | 03/11/97 |
| **Latvia** | 29/05/07 | **31/01/02** | |
| **Liechtenstein** | **09/10/91** | | |
| **Lithuania** | 08/09/97 | 29/06/01 | |
| **Luxembourg** * | 11/02/98 | **10/10/91** | |
| **Malta** | 27/07/05 | 27/07/05 | |
| **Moldova** | 03/11/98 | 08/11/01 | |
| **Monaco** | 05/10/04 | | |
| **Montenegro** | 22/03/05 | | |
| **Netherlands** | 23/01/04 | 03/05/06 | 03/05/06 |
| **Norway** | 07/05/01 | 07/05/01 | 20/03/97 |
| **Poland** | 25/10/05 | **25/06/97** | |
| **Portugal** | 03/05/96 | 30/05/02 | 20/03/98 |
| **Romania** | 14/05/97 | 07/05/99 | |
| **Russian Federation** | 14/09/00 | | |
| **San Marino** | 18/10/01 | | |
| **Serbia** | 22/03/05 | | |
| **Slovak Republic** | 18/11/99 | **22/06/98** | |
| **Slovenia** | 11/10/97 | 07/05/99 | 07/05/99 |
| **Spain** | 23/10/00 | **06/05/80** | |
| **Sweden** | 03/05/96 | 29/05/98 | 29/05/98 |
| **Switzerland** | **06/05/76** | | |
| **«the former Yugoslav Republic of Macedonia»** | **05/05/98** | **31/03/05** | |
| **Turkey** | 06/10/04 | 27/06/07 | |
| **Ukraine** | 07/05/99 | 21/12/06 | |
| **United Kingdom** * | 07/11/97 | **11/07/62** | |
| Number of States 47 | **4**+ 43 = 47 | **15** + 25 = 40 | 14 |

The **dates in bold** on a grey background correspond to the dates of signature or ratification of the 1961 Charter; the other dates correspond to the signature or ratification of the 1996 Revised Charter.

* States whose ratification is necessary for the entry into force of the 1991 Amending Protocol. In practice, in accordance with a decision taken by the Committee of Ministers, this Protocol is already applied.

X State having recognised the right of national NGOs to lodge collective complaints against it.

# Chapter 1 – Conclusions concerning Articles 1, 20, 24 and 25 of the Revised Charter in respect of Albania

## 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 Albania on 14 November 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 Albania submitted it on 31 October 2007. On 12 February 2008, a letter was addressed to the Government requesting supplementary information regarding Articles 1§2 and 25. The Government did not submit any supplementary information.*

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).

Albania has accepted these articles with the exception of Articles 9, 10, 15 and 18.

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

The present chapter on Albania concerns 7 situations and contains:

– no conclusions of conformity
– 1 conclusion of non-conformity: Article 24.

In respect of the 6 other situations concerning Articles 1§1, 1§2, 1§3, 1§4, 20 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 Albanian 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 Albania's report.

*Employment situation*

The Committee notes from Eurostat that the growth increased slightly once again, from 5.71% in 2004 to 5.82% in 2005.

The employment rate was 49.7% in 2005, which was marginally lower than in the previous reference period but considerably lower than the EU-15 average (65.3% in 2005). It was also much higher at this time among men (60%) than women (38.8%).

As to unemployment, while still high, it fell a little over the same period, from 14.4% in 2004 to 14.1% in 2005.

The Committee asks for information on the long-term unemployed as a proportion of all unemployed and the youth unemployment rate (among 15-24 year-olds). In the absence of any information in the report, it asks again for the statistics on unemployment among persons with disabilities and minorities.

*Employment policy*

The Act No. 9570 of 3 July 2006 amending the 1995 Employment Act defines the main aim of all employment policies. Some of the main terms tied up with employment policy such as "jobseeker" and "employment services" were defined more clearly in the new Act. The Committee notes that there are local three-party councils comprising employees', employers' and government representatives, which are involved in the implementation of national employment policy.

Priority is given to active measures designed to help young people (aged 15 to 24). For instance, during the reference period, a new programme was launched to promote employment among young graduates through a six-month work placement with a private

company or a public service. A similar scheme was launched for young unemployed graduates in 2006.

The report does not detail active measures relating to all vulnerable groups and fails to answer the questions put by the Committee in its previous conclusion (Conclusions 2006).

The Committee therefore asks again for the next report to answer the following questions:

– how many participants in active measures are there?
– how much time elapses on average between a person registering as unemployed and receiving an offer of participation in an active measure?

It also wishes to know what measures are specifically aimed at the long-term unemployed. The Committee asks 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 Albania's report.

It notes however that there are no answers in the report to any of the questions in its last conclusions, whether those directed specifically at Albania under Article 1§2 or the ones put to all the states party in the general introduction to Conclusions 2006.

It asks that the questions below be answered. The Committee underlines that if the next report does not provide the necessary information, nothing will demonstrate that the situation of Albania is in conformity with Article 1§2.

1. Prohibition of discrimination in employment

The Committee recalls that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion (Conclusions 2006). Legislation should cover both direct and indirect discrimination. As regards indirect discrimination, the Committee recalls that Article E of the Revised Charter prohibits: "all forms of indirect discrimination. 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. 13/2000, decision on the merits of 4 November 2003, §52).

Article 9 of the Albanian Labour Code prohibits discrimination in employment on grounds of race, colour of skin, sex age, religion, political beliefs, nationality, social origin, family relations or physical and mental disabilities. Differences, distinctions, exclusions or preferences required by a particular occupation are not considered to constitute discrimination.

As Albania, has accepted Article 20 of the Revised Charter, equality in employment between men and women is examined under this provision.

A breach of the non-discrimination principle as laid down in Article 9 of the Labour Code is punishable by a fine amounting to 50 times the monthly minimum wage (Article 202 of the Labour Code). Article 201 of the Labour Code provides for damages to be paid to employees whose rights have been violated.

The Committee recalls that in order to enable effective access to justice domestic law must provide for the sharing of the burden of proof to the benefit of the plaintiff in cases of alleged discrimination

Further the Committee recalls that under Article 1§2 of the Revised Charter remedies available to victims of discrimination must be adequate, proportionate and dissuasive. It therefore considers that the imposition of predefined upper limits to compensation that may be awarded not to be in conformity with the Revised Charter as in

certain cases that may preclude damages from being awarded which are commensurate with the loss and damage actually sustained and may not be sufficiently dissuasive for the employer.

In order to assess the situation, and since the report does not answer these questions, the Committee asks again:

– whether discrimination on grounds of sexual orientation is prohibited;
– information on exemptions to the rules which are permitted for genuine occupational requirements, examples of the occupations concerned;
– how the concept of discrimination both direct and indirect has been interpreted by the courts,
– how discrimination on grounds of age has been interpreted;
– whether, in respect of discrimination on grounds of disability the requirement of 'reasonable accommodation' has been adopted.
– the number of cases alleging discrimination brought before the courts, as well as the number of findings of discrimination
– information on the procedure to be followed in cases alleging discrimination, for example whether there an alleviation in the burden of proof?
– information on remedies i.e. reinstatement or damages that may be awarded to a victim of discrimination and confirmation that there are no pre-defined limits to the amount of damages that may be awarded;
– information on the right of associations, organisations or other legal entities, to obtain a ruling that the prohibition of discrimination has been violated in the employment context;
– information on a specific independent body to promote equal treatment.

The Committee considers that non-discrimination legislation can only be truly effective if it forms part of a broader strategy on equality and asks again for information on measures taken to promote equality in employment.

As regards discrimination in employment on grounds of nationality the Committee recalls again 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 therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority. The Committee asks whether and if so, what categories of employment are closed to non-nationals.

2. Prohibition of forced or compulsory work

Article 8 of the Labour Code prohibits compulsory labour. The ban on forced labour does not apply to compulsory military service and requisitioning in times of war, natural disasters or other situations threatening the life of the community or to work imposed by a court as a punishment where the individual is not put at the disposal of private persons or enterprises.

The Committee considers these exceptions are compatible with Article 1§2 of the Revised Charter but asks again whether there are other circumstances under Albanian law where workers may be required to undertake work without consent.

*Prison work*

The Committee recalls that under Article 1§2 of the Revised Charter, prison work must be strictly regulated in terms of pay working hours etc., particularly if prisoners are working in private enterprises. Prisoners may only work in private enterprises with their consent and under conditions as similar as possible to those normally associated with an employment relationship (Conclusions XVI-1, Germany).

In order to assess the situation, the Committee invites again the Government to reply to its question in the General Introduction to Conclusions 2006 on prison work:

– 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, §§13-21).

*Restrictions linked to the fight against terrorism*

The Committee invites again the Government to reply to its question in the General Introduction to Conclusions 2006 as to whether a legislation against terrorism exist and whether it precludes persons from taking up certain employment.

*Part time work*

The Committee recalls that in order to be in conformity with Article 1§2 of the Revised Charter, part time work must be accompanied by adequate legal safeguards. In particular there must be rules to prevent non-declared work through overtime, and rules to ensure equal pay, in all its aspects between part time and full time workers (Conclusions XVI-1, Austria).

Since the report does not address this, the Committee asks again for information on this issue.

*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 Albania's report.

It notes that Act No. 9570 of 3 July 2006 amending the 1995 Employment Act introduced the concept in the labour market of "access to public employment services". One of its other main aims was to improve mediation with jobseekers. The Committee asks to be informed of the outcome of its implementation, particularly with regard to the placement of jobseekers.

The report does not answer the questions put by the Committee in its previous conclusion (Conclusions 2006). It emphasises that this information is essential for it to assess the true effectiveness of the public employment services. Accordingly, it asks for the next report to answer the following questions:

– what is the placement rate – that is placements made by the public employment services as a percentage of the total number of persons recruited on to the labour market?
– how long does it take on average to fill a vacancy?
– what percentage of the market do the public employment services cater for – in other words how many placements does it make compared to total recruitments on the labour market?

The number of public employment services did not change during the reference period. Previously, the Committee noted that in view of the large numbers of unemployed, the regional branches seemed to be understaffed. In the absence of any further information, it asks again whether it is intended to increase staff numbers in the public employment services. The Committee also asks how many staff there are at the vocational training offices.

Lastly, it asks for information on the results of co-ordination between public employment services and private agencies.

*Conclusion*

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 Albania's report.

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 to the Charter 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, Albania has not accepted these three provisions and the Committee assess the conformity of the situation under Article 1§4.

The Committee considers the following questions 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 training.

*Vocational guidance*

The vocational guidance system in Albania is governed by a number of statutes and more detailed provisions, such as the Education and Vocational Training Act, No. 8872 of 29 March 2002, and the directive on guidance in vocational training.

Under Employment Act No. 7995 of 20 September 1995, the work of the employment services includes providing vocational guidance with the aim of helping unemployed people to choose appropriate jobs while taking account of their individual skills and the needs of the labour market. This guidance is provided free of charge by the national employment office, which has specialised qualified staff for the job. During the reference period, 36 employment offices provided services throughout the country, with 12 operating at regional level and 24 at local level. In 2007, some 1 500 unemployed people were offered some form of vocational guidance.

The Committee would like the next report to provide more detailed information on the organisation and staffing of the bodies offering vocational guidance. It would also like to know what provision is made for vocational guidance for persons with disabilities.

*Continuing vocational training*

The report supplied no information on continuing training. It merely referred to the lack of any real continuing vocational training facilities for the staff of training institutions. The Committee asks again for information on continuing vocational training for workers and unemployed persons. It also asks whether Education and Vocational Training Act No. 8872 of 2002 has provisions on continuing vocational training.

In the absence of any reply in the report, the Committee asks again approximately how many training placements or courses are on offer and how many people have taken part in continuing training so that it can determine whether supply meets demand for training. In cases where companies organise training courses, it asks whether employees' training costs are covered by the company or the trainees.

*Guidance, education and training for persons with disabilities*

There was no information on the subject in the report.

The Committee asks for detailed information on measures to provide persons with disabilities with education and vocational training on the job or, if this is not available, in specialist public or private institutions. It also asks how many persons benefit from these services.

Finally, it asks whether nationals of other states party lawfully residing and working in Albania enjoy equal treatment with regard to all of the issues considered under Article 1§4.

The Committee emphasises that if the next report does not provide all of the above requested information, there will be nothing to show that the situation in Albania is in conformity with Article 1§4 of the Revised Charter.

*Conclusion*

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

**Article 20 – The 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 Albania's report.

It notes that the report contains no new information and no information in response to the Committee's previous questions (Conclusions 2006).

The Committee asks the next report to provide all the necessary information, otherwise there will be nothing to show that the situation is in conformity with Article 20 of the Revised Charter.

*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 Albania's report.

*Scope*

The Committee noted in its previous conclusion (Conclusions 2007) that employees on probation (trial period) which lasts a maximum of three months may be dismissed with 5 days' notice.

*Obligation to provide a valid reason for termination of employment*

The Committee previously examined the reasons for termination of employment as stipulated in the Labour Code and raised a number of questions to which the report does not provide any response and which are therefore reiterated in the following. It points out that should the next report not provide the requested information, nothing will establish that the situation is in conformity with Article 24 on these points.

The Committee had found in its previous conclusion that the Labour Code appears not to provide that a dismissal with notice must be based on reasons connected with the employee's capacity, conduct or based on the occupational requirements of the undertaking and that the employer is permitted to dismiss an employee for reasons which go beyond those permitted by Article 24 of the Revised Charter. It reiterates its request for full information on all grounds on which an employer may terminate a contract of employment with notice.

The Committee had further noted that Section 153 of the Labour Code permits the employer to terminate a contract of employment without notice for "grounded reasons" which relate to the conduct of the employee. Paragraph 3 of Section 153 states that it is for the court to decide whether there has been reasonable cause for the immediate termination of the employment contract, and that reasonable cause will be considered only in such cases where the employee breaches the contractual obligations in a serious manner or where the employee repeatedly violated the contractual obligations despite being warned.

The Committee reiterates its request for a summary of pertinent case law showing how the aforementioned grounds for termination are interpreted by the competent courts in practice. In this context it would also like to know under which conditions an employee may be made redundant for economic reasons and whether courts are empowered to review the facts underlying the economic reasons invoked by the employer in case of a dismissal.

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 Albania 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 Albanian law allows 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 contracts of employees who reach this age are automatically terminated.

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 asked for the rules applying to protection of employees against retaliatory dismissal in the event they turn to the courts or another competent authority to enforce their rights as well as in the event of temporary absence from work due to illness or injury.

The Committee notes from Section 146 para 1 of the Labour Code that a dismissal is considered unlawful, *inter alia,* in the event the

employee has claims resulting from the employment relationship or on the ground that he/she exercises a constitutional right.

Section 147 para 1 of the Labour Code stipulates that an employer may not terminate an employment contract where an employee has a statutory right to claim payments from the employer or the Social Insurance related to his/her temporary disability to work for a period of up to one year. The Committee asks the next report to provide further information under which conditions an employee qualifies for such claims. It repeats its question concerning retaliatory dismissal;

*Remedies and sanctions*

It appears from Sections 146 and 153 of the Labour Code that an employee may in any event have recourse to the courts when he/she considers a dismissal to be unlawful and the Committee asks what are the competent courts in this respect.

The report states that in the event of a court proceeding regarding unfair dismissals, the burden of proof lies with the employee. The Committee 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. It asks the next report to specify whether Albanian law provides for such an adjustment.

Pursuant to Section 146 para 3 of the Labour Code the termination of an employment contract in violation of this provision shall be invalid and the employer shall be under an obligation to pay the employee compensation up to a maximum amount of one year's salary. In the event the dismissal of an employee in public administration has been declared unlawful, the court may also order reinstatement.

The Committee asks the next report to answer whether courts may only order reinstatement in the event of an unfair dismissal of employees other than civil servants.

Pursuant to the said provisions, compensation in the event of unfair dismissal appears to be limited to an amount equal to the wage of one year plus the wage an employee would be entitled to during the termination notice deadline. 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. It finds the situation in Albania not to be in conformity with the Revised Charter in this respect.

*Conclusion*

The Committee concludes that the situation in Albania is not in conformity with Article 24 of the Revised Charter on the ground that the compensation for unlawful termination of employment is subject to a maximum of one year's wages.

**Article 25 – The 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 Albania's report.

The current report is simply a partial repeat of what appeared in the previous report and therefore fails to answer the questions in Conclusions 2007. Before returning to these questions, reference should be made to the case-law on the protection of claims in the event of employers' insolvency and the relevant national regulations.

States that have accepted Article 25 benefit from a margin of appreciation as to the form of protection of workers' claims, 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 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 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. In exceptional cases, certain categories of employee may be excluded from the scope of Article 25 protection.

The Committee takes note of the definition of insolvency given by Article 124 of the Labour Code. It however asks for detailed information on rules and procedures governing insolvency in the next report. The Committee also asks whether employee protection also applies when businesses cease trading without being able to honour their commitments but have not been formally declared insolvent nor placed in receivership.

There is no legal provision for a specific guarantee institution. However, employers' obligations to their employees up to not less than 5 months' minimum wage have priority over all other obligations. The Committee notes that these are not suspended by bankruptcy proceedings. It infers from this that in respect of at least part of what they are owed employees take precedence over all other creditors, including those that take priority in bankruptcy

proceedings. The Committee requests confirmation of this assumption. It again wishes to obtain detailed statistics on average and minimum wages in the next report. Finally, the Committee repeats its questions in the last conclusions:

– What is the normal or average time from when claims are lodged to when payments are made?
– What types of workers' claims are protected under the terms of their employment relationship in the event of employers' insolvency?
– Are part-time employees, employees on fixed-term contracts and persons on temporary contracts also covered by the law in force?

The Committee points out that if the next report does not provide the necessary information, there will be nothing to show that the situation in Albania is in conformity with Article 25.

*Conclusion*

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

# Chapter 2 – Conclusions concerning Articles 1, 9, 10, 15, 18 and 20 of the Revised Charter in respect of Andorra

## Introduction

The function of the European Committee of Social Rights is to examine 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 Andorra on 12 November 2004 and entered into force in the state on 1 January 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 Andorra failed to submit it within the deadline.*

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

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

Andorra has accepted these articles with the exception of Articles 18§1, 18§2, 18§3, 24 and 25.

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

The Committee notes the failure of Andorra to respect its obligation, under the Charter, to report on the implementation of this treaty within the deadline. However, as the report was finally submitted on 31 October 2008 the Committee will examine it and publish the conclusions at a later stage.

The next Andorran 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.

# Chapter 3 – Conclusions concerning Articles 1, 15, 18, 20 and 24 of the Revised Charter in respect of Armenia

## 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 Armenia on 21 January 2004. The time limit for submitting the 2nd report on the application of the Revised Charter to the Council of Europe was 31 October 2007 and Armenia submitted it on 25 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).

Armenia has accepted these articles with the exception of Articles 9, 10, 15§1 and 25.

The applicable reference periods were:

– 1 March 2004 – 31 December 2006 for Articles 1§1, 1§2, 1§3 and 20
– 1 January 2005 – 31 December 2006 for Articles 1§4, 15, 18 and 24.

The present chapter on Armenia concerns 12 situations and contains:

– 4 conclusions of conformity: 1§3, 1§4, 18§4 and 24;
– 1 conclusion of non-conformity: 15§2.

In respect of the 7 other situations concerning Articles 1§1, 1§2, 15§3, 18§1, 18§2, 18§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 next Armenian 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 – The right to work

*Paragraph 1 – Policy of full employment*

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

*Employment situation*

The Committee notes that, according to Eurostat, growth in Armenia accelerated during the reference period, from 10.5% in 2004 to 13.3% in 2006.

The employment rate continued its upward trend with a slight increase during the reference period, from 50% in 2004 to 50.3% in 2006. The rate was significantly higher among men than among women (61.6% and 39.5% respectively in 2005). These rates are well below the EU-15 average (65.3% for the population at large and 57.7% for women in 2005).

The unemployment rate decreased during the reference period, from 31.6% in 2004 to 28.1% in 2006. The female unemployment rate also declined, from 37.6% in 2004 to 34.9% in 2006. Among young people (15-24) the unemployment rate fell from 57.4% in 2004 to 55.9% in 2006. These unemployment rate are very high and are significantly above the EU-15 average (respectively 7.7%, 8.5% and 15.7% in 2006).

The Committee notes from another source[1] that the long-term unemployed as a proportion of all unemployed amounted to about 78% in 2005, compared with an EU-15 average of 42.1% in 2006. It notes that this rate is extremely high and asks what measures are taken to remedy the problem of long-term unemployment in Armenia.

According to the report, the number of persons with disabilities in employment has risen from 1 039 in 2005 to 1 928 in 2006. The Committee asks for information on the unemployment situation of persons with disabilities.

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[1] Website of the ILO: www.ilo.org

*Employment policy*

According to the report, the main objective of the Government's employment policy are to achieve full employment, and more specifically to:

– eliminate of all forms of discrimination in employment;
– adapt vocational guidance to the specific requirements of the labour market;
– guarantee social protection for the unemployed.

The Committee asks for information on changes in legislation during the reference period and on passive measures.

Priority is given to active measures and to the most vulnerable groups on the labour market – persons with disabilities, the long-term unemployed and refugees. The report describes various programmes to offer the unemployed training or retraining, encourage them to create small businesses or place them in subsidised jobs in the private or public sectors. The Committee requests the next report to comment the low employment rate among women.

It notes from the report that 952 persons took part in training in 2006 (1,205 in 2005), and 10,254 were given subsidised employment in the public sector (7,913 in 2005). It asks for information on the total number of persons benefiting from the various active measures and for the activation rate, that is the number of unemployed taking part in active measures as a percentage of the total number of jobseekers.

The Committee asks for details in the next report of 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 Armenia’s report.

1. Elimination of all forms 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, Albania).

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, 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 Armenia's legislation banning discrimination based on disability under this provision. Similarly, for states such as Armenia that have accepted Article 20, the right to equal treatment and opportunities without discrimination based on sex is considered under this provision.

Under Article 14§1 of the Armenian Constitution, everyone is equal before the law. Discrimination on grounds of gender, race, skin colour, ethnic or social origin, genetic characteristics, language, religion, philosophy, political or other convictions, membership of a national minority, property status, disability, age or other factors of a personal or social nature is prohibited. Article 3§1.3 of the Labour Code provides for equality of parties to employment relationships irrespective of gender, race, nationality, language, origin, citizenship, social status, religion, marital and family status, age, philosophy and convictions, membership of a political party, trade union or public organisation and other factors unrelated to the employee’s professional qualities.

The Committee notes that sexual orientation is not explicitly included in the grounds on which the legislation bans discrimination. It considers that this ground is covered by "other factors of a personal nature", in the case of the Constitution, and "other factors unrelated to the employee’s professional qualities" in the case of the Labour Code. However, its asks the Government to confirm this interpreta-

tion, if appropriate with reference to court rulings. It also asks for information on any steps taken to avoid discrimination, particularly on this ground.

The Committee has concluded that the discriminatory acts and provisions prohibited by this provision may apply to all aspects of recruitment and employment conditions in general, including remuneration, training, promotion, transfer, dismissal and other forms of detriment (Conclusions XVI-1, Austria). It asks for information in the next report showing how the aforementioned legal provisions are applied and enforced for each of the forms of employment discrimination prohibited by Article 1§2. It also asks whether there is a national strategy for combating all forms of discrimination in employment.
The Committee asks how the bans on direct and indirect discrimination are enforced.

The Committee has concluded that exceptions to the ban on discrimination may be authorised for essential occupational requirements or to permit positive action (Conclusions 2006, Bulgaria). Under Article 3§2 of the Labour Code, employment rights may be restricted, but only by law and if this is necessary for the protection of public security, public order, public health and morals, rights and interests of others, or persons' honour and good reputation. The Committee asks how this is applied and interpreted.

The Committee has also concluded that in order to make the prohibition of discrimination effective, domestic law must at least provide for:

– the power to set aside, rescind, abrogate or amend any provision contrary to the principle of equal treatment which appears in collective labour agreements, in employment contracts or in firms' own regulations (Conclusions XVI-1, Iceland). The Committee asks what the legislation stipulates in this regard and how it is enforced;
– protection against dismissal or other retaliatory action by the employer against an employee who has lodged a complaint or taken legal action (Conclusions XVI-1, Iceland). The Committee again asks what the legislation stipulates in this regard and how it is enforced;
– appropriate and effective remedies in the event of an allegation of discrimination; remedies available to victims of discrimina-

tion 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 (Conclusions 2006, Albania). Article 41 of the Administrative Violations Code provides for penalties of up to 100 times the minimum wage, and 200 times in the event of a further offence within twelve months, for employers in breach of the employment legislation. The Committee asks whether these penalties are paid to the state or represent compensation to the employees concerned. It they do not constitute compensation, it asks what damages are payable where discrimination is found and whether they are subject to an upper limit. It also asks what remedies are available for persons who think they have suffered 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 asks for a description in the next report of the situation regarding the burden of proof in disputes concerning allegations of discrimination.

The Committee considers that other means of combating discrimination in accordance with Article 1§2 of the Revised Charter include:

– recognising the right of trade unions to take action in cases of discrimination in employment, including action on behalf of individuals (Conclusions XVI-1, Iceland). The Committee asks whether trade unions have this right;
– granting groups with an interest in obtaining a ruling that the prohibition of discrimination has been violated the right to take collective action. The Committee asks whether such collective action is possible;
– setting up a specialised and independent body to promote equal treatment, particularly by providing discrimination victims with the support they need to take proceedings (Conclusions XVI-1, Iceland). The Committee asks whether such a specialised body exists.

The Committee recalls that States Parties may make foreign nationals' access to employment on their territory subject to

possession of a work permit, they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G; restrictions on the rights guaranteed by the Charter are admitted only if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority (Conclusions 2006, Albania). The Committee asks whether foreign nationals have full access to employment, and in particular whether jobs in the public service are reserved for Armenian nationals and if so how such restrictions are justified.

Finally, the Committee has ruled that excluding persons from public functions, in the form of refusal to recruit or dismissal, because of their previous political activities, is prohibited when it is not "necessary", within the meaning of Article G, because it does not apply solely to departments with responsibilities in the field of law and order and national security or to functions involving such responsibilities (Conclusions 2006, Lithuania). The Committee asks whether such exclusion is possible with regard to past or present political activities and if so in what way it can be deemed necessary, within the meaning of Article G.

2. Prohibition of forced or compulsory labour

The Committee considers that forced or compulsory labour in any form must be prohibited. Failure to apply in practice legislation that is incompatible with the Charter is not sufficient to bring the situation into line with the Charter (Conclusions XIII-3, Ireland). Forced labour is prohibited under Article 32 of the Constitution and Article 3§2 of the Labour Code. Under Article 3§2 of the Labour Code, employment rights may be restricted, but only by law and if this is necessary for the protection of public security, public order, public health and morals, the rights and interests of others, or persons' honour and good reputation. The Committee asks how these provisions are applied and interpreted, and what penalties may be imposed.

*Prison work*

The Committee recalls that Article 1§2 of the Revised Charter requires strict regulation of prison work, in terms of remuneration, working hours and so on, particularly when the prisoners work for private employers. Prisoners may only be employed by private companies with their consent and in conditions as similar as possible to those normally associated with a private employment relationship (Conclusions XVI-1, Germany).

Working conditions in prison are governed by the Prison Code, which specifies that as far as possible prisoners should be entitled to work or be allowed to seek it. Employment conditions are subject to normal labour law, except where specified by law. The pay must be no lower than the minimum wage. With their consent, prisoners may be asked to perform up to two hours' unpaid work on behalf of the prison on working days.

To complete this information, the Committee 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

The Committee recalls that several other practices may cause problems from the standpoint of Article 1§2:

*Part-time work*

There must be various legal safeguards attached to part-time work. The Committee needs to know whether there is a minimum working week and whether there are 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 (Conclusions XVI-1, Austria). The Committee notes that the report fails to deal with this matter. It therefore asks for information in the next report on the legal safeguards attached to part-time work and how they are applied.

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

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

The Committee has ruled that the right to earn a living in an occupation freely entered upon means that for a reasonable initial period job seekers must be able to refuse job offers that do not correspond to their qualifications and experience without risking the loss of their unemployment benefits (Conclusions 2004, Cyprus). The Committee asks for information in the next report on this subject.

*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 invites the Government to reply to its question in the General Introduction to Conclusions 2006 as to whether a legislation exist against terrorism and whether it precludes persons from taking up certain employment.

*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 Armenia's report.

The national employment agency, which is answerable to the ministry of labour and social affairs, is mainly responsible for providing information and implementing employment policies, but it also finds work for jobseekers and puts them in contact with employers. During the reference period, the agency had 51 local branches.

The Committee notes that services are provided to users free of charge.

According to the report the number of vacant posts notified to the public employment services rose during the reference period from 1,129 in 2005 to 1,167 in 2006. It also refers to a total of 1,429 other job vacancies recorded in the statistics. The Committee asks whether these are data from private employment agencies.

According to the report, the number of persons found work by the public employment services rose from 6,300 in 2005 to 7,000 in 2006, meaning that the placement rate increased from nearly 56% in 2005 to about 60% in 2006. A total of 7,915 persons received guidance from the national employment agency. The Committee asks how much time elapses on average between a person registering as unemployed and receiving an offer of an active measure.

It also 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.

According to the report, private agencies may offer placement services without the prior need for a licence. They are recorded on a register maintained by the justice ministry. The Committee asks whether their activities are subject to scrutiny by the ministry or whether they are required to submit an annual report.

The Committee notes that trade unions and employers' organisations are involved in the management of public employment services at both national and local levels.

*Conclusion*

The Committee concludes that the situation in Armenia 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 Armenia's report.

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, Armenia has not accepted these provisions and the Committee assesses the conformity of the situation under Article 1§4.

The Committee considers the following questions 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 training.

*Vocational guidance*

Under Government Decree No. 1915N of 14 December 2006, a vocational guidance centre for young people was set up. It is administered by the Ministry of Labour and Social Affairs and employs qualified staff offering advice to pupils aged 14 to 16.

In the labour market, vocational guidance is provided free of charge by the national employment office through its 51 regional centres and through the vocational guidance centre for young people. Guidance services may also be provided by private commercial bodies.

The national employment office has 405 employees and the vocational guidance centre for young people has nine. In 2005, 6,503 people were given some form of vocational guidance. In 2006, this figure rose to 7,915.

According to the report, no separate account is kept of the budget allocated to vocational guidance. The Committee asks what expenditure is more particularly related to guidance.

The Committee asks what the situation is as regards guidance targeted more particularly at people with disabilities.

*Continuing vocational training*

Article 49 of the Labour Code sets out the arrangements for continuing training and Article 174 contains the provisions on special educational leave. Under Article 200, employees must continue to be paid their average daily wage when they attend training at their employer's request. Where employees follow a training course on their own initiative, payment conditions are governed by a collective agreement or a one-off agreement between the two parties.

On 29 December 2005, the Government adopted a strategy to establish a national continuing training policy. Continuing training is provided for employees and unemployed persons by teaching establishments or other non-educational public or private organisations. Training programmes are drawn up in accordance with labour market needs. All persons are treated equally.

During the reference period, the national employment office organised training relating to 51 occupations on 35 sites, eight of which were national public institutions. The number of unemployed people who were given vocational training fell from 1,205 in 2005 to 952 in 2006. The Committee asks why this figure decreased and how many employees attended training.

Where companies hold training courses, the Committee asks whether training costs are covered by the companies or the trainees themselves.

*Guidance, education and training for persons with disabilities*

During the reference period, regional and local employment offices held training courses for people with disabilities covering areas such as civil service activities and various specific occupations such as cooking, plumbing and computing.

The Committee asks for information in the next report on measures taken to provide persons with disabilities with guidance, education and vocational training in the labour market, in the framework of general schemes wherever possible or, where this is not possible, through specialised public or private bodies. It also asks how many people make use of these services.

According to the report, all the persons concerned are guaranteed equal treatment, including citizens of other States Parties, stateless persons and persons with disabilities.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Armenia is in conformity with Article 1§4 of the Revised Charter.

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

*Paragraph 2 – Employment of persons with disabilities*

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

According to the report, in 2005, there were 141,382 registered persons with disabilities, of whom 79,174 persons with disabilities were of working age (16-63 years of age). While noting that the number of employed disabled persons increased during the reference period from 1,039 persons in 2005 to 1,928 persons in 2006, the Committee still considers the employment rate of persons with disabilities very low.

Moreover, the Committee reiterates that it systematically asks to also be provided with up-to-date figures concerning the total number of persons with disabilities employed (on the open market and in sheltered employment), those benefiting from employment promotion measures and those seeking employment as well as of those who are unemployed. In the absence of these figures, it cannot be established whether the situation is in conformity with Article 15§2.

*Definition of disability*

The Committee reiterates that it wishes to know whether the WHO International Classification of Functioning, Disability and Health – ICF 2001 is included in the reference classifications of the Government Decree N780/2003 which defines the classifications used during the socio-medical expertise which determines the disability status.

*Non-discrimination legislation*

In its previous conclusion (Conclusions 2007), the Committee recalled that under Article 15§2, anti-discrimination legislation is required in order to create genuine equality of opportunities in the open labour market. It therefore asked whether explicit anti-discrimination legislation in the field of employment exists, its content and the forms of judicial and non-judicial redress it provides in cases of discrimination on the basis of disability, including pertinent case

law. From the report it is not clear whether such a legislation exists and no information is provided with regard to remedies and case-law. The Committee therefore reiterates all its questions.

In addition, the Committee asks for clarifications concerning the practical application of Article 17 of the Law on Social Protection of Disabled Persons which prohibits administrations to refuse to hire or dismiss a disabled person, to promote or redeploy him/her to another workplace except in cases when a medical-social expertise concludes that the disabled person's health hinders the performance of occupational duties or threatens the health and occupational safety of other persons. Moreover, the Committee asks whether this legislation covers only the public sector.

Finally, in order to assess whether the right to non-discrimination in employment is effectively guaranteed for persons with disabilities, the Committee asks the next report to indicate how the reasonable accommodation obligation, which is stipulated by the Law on Social Protection of Disabled Persons, is implemented in practice, whether there is case law on the issue and whether it has prompted an increase in employment of persons with disabilities in the open labour market.

*Measures to promote employment*

The Committee refers to its previous conclusion (Conclusions 2007.) for a description of the vocational training and rehabilitation opportunities offered to disabled job seekers. In this regard, it notes that the number of disabled persons involved in vocational training activities increased during the reference period from 66 persons in 2005 to 98 in 2006. The report further informs that in 2008 (outside the reference period) an Employment Rehabilitation Centre was established to help integrating persons with disabilities in the open labour market. The Committee asks the next report to provide information on the results in this regard of the new Centre. It also reiterates that it wishes to receive more details on other measures in place to promote the employment of persons with disabilities.

The Committee notes that, in 2006, 11 disabled persons were hired thanks to a programme providing partial financial compensation to employers hiring persons from uncompetitive groups in the labour market.

The Committee reiterates that to assess the conformity of the situation under Article 15§2, it has to know how many disabled persons benefit from the measures in place to enable their integration into the ordinary labour market as well as the general rate of progression of disabled persons from sheltered employment to the ordinary labour market.

Finally, the Committee asks again whether trade unions are active in sheltered employment facilities. It also asks for further details on the requirements set by legislation as regards the calculation of salary paid to persons working in sheltered employment where production is the main activity.

*Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 15§2 of the Revised Charter on the ground that it has not been established that persons with disabilities are guaranteed effective protection against discrimination in 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 Armenia's report.

*Anti-discrimination legislation and integrated approach*

The Committee reiterates that the right of persons with disabilities to social integration provided for by Article 15§3 requires the removal of barriers to communication and mobility to give disabled persons access to road, rail, sea and air transport, public, social and private housing, and cultural activities and leisure, such as social and sporting activities. For this purpose, Article 15§3 requires the following to be established:

– anti-discrimination legislation covering both the public and private spheres in fields such as housing, transport, telecommunications, culture and leisure, as well as effective remedies for those who have been treated unlawfully;

– a coherent policy for the disabled, and positive action measures to achieve the aims of social integration and full and comprehensive participation by people with disabilities. These measures must be co-ordinated and based on clear legal foundations.

In its previous conclusion (Conclusions 2007), the Committee noted that the Act on the Social Protection of Disabled Persons amended in 2005 governed the rehabilitation of people with disabilities and questions of access. In the absence of any information on this legislation in this report, the Committee asks for the next report to provide information on the existence of any anti-discrimination legislation covering the spheres cited above, as well as its content and any judicial or non-judicial remedies that it provides for in the event of discrimination, along with a description of any relevant case-law.

In respect of social integration policy, the report states that as a result of Decree N747 of 10 October 2006, a Council made up of representatives of the authorities and NGOs has been set up to look into questions relating to persons with disabilities. Its aim is to promote the integrated planning of the actions of these people in society and to create the conditions for equal treatment in all spheres of community life. Under Decree N98-N of 25 February 2008, the Council was reconstituted in the form of a National Commission on Persons with Disabilities.

*Consultation*

The Committee notes that there has been no change in the situation which it previously considered (Conclusions 2007, Armenia) to be in conformity.

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

Under sections 21 and 25 of the State Benefits Act, a disability allowance is granted to persons who have been certified disabled by the competent authority following a social and medial assessment. Under Government Decision N2317-N of 29 December 2005, a person's disability is taken into account when evaluating the financial status of a family to determine whether it is entitled to poverty

benefit. In such cases, disabilities are regarded as a factor of social vulnerability.

*Measures to overcome obstacles*

Technical aids

According to the report, Government decision N1780/2003, under which persons with disabilities were entitled to free prosthetic and orthopaedic appliances and other technical aids, was amended by Government decision N453-N of 14 April 2007. The latter sets out a new procedure for issuing prosthetics, orthopaedic apparatus and other technical aids. The Committee asks for the next report to provide information on how this decision is applied in practice and how these aids are granted.

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

Under the 2006-2015 Strategy for the social protection of the disabled, several television companies now broadcast programmes in sign language. “Speaking books” are also available for blind people, and books and newspapers are produced in Braille for people with poor eyesight. In the absence of any reply in the report, the Committee asks again if measures have been taken to promote access to the new information and telecommunication technologies.

Mobility and transport

One of the main aims of Government Decree N392-Ü of 16 February 2006 is to improve transport for the disabled by adapting street furniture and facilities in the underground as well as installing ramps and light and sound signals. The Committee asks for information in the next report on the practical implementation of this decree.

According to the report, special teams have been appointed to help people with disabilities at airports. The Committee asks what measures have been taken to improve access to other types of transport (rail, road and sea).

Housing

The report describes the legislation relating to housing policy in general (Decree N1473-Ü of 29 August 2002 and Decree N812 of 21 December 1998) and to housing policy more specifically aimed at people with disabilities (Decree N392-Ü of 16 February 2006). Decree N392-Ü includes a requirement to cater for disabled access when constructing private housing or public buildings, particularly through the installation of access ramps, lifts and light and sound signals. The Committee asks if financial assistance is provided for the conversion of existing housing.

Culture and leisure

Another of the main aims of Government Decree N392-Ü of 16 February 2006 is to improve disabled access to sports facilities. Furthermore, under the building standards introduced in 2006 to facilitate disabled access to public buildings, cultural and sports facilities (such as museums, theatres, cinemas and sports centres) are required to reserve special places for persons with disabilities.

*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 existing regulations in a spirit of liberality*

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

*Foreign population and migration flows*

The Committee previously (Conclusions 2007) wished to be informed of trends observed in Armenia in migration flows from States Parties. In the absence of a reply, it reiterates its question.

*Work permits*

In reply to the Committee, the report specifies that there are three types of residence permit under the new law on foreign nationals of 25 December 2006: temporary, permanent and special. The temporary permit has a one year period of validity, renewable for one year provided that the application is submitted not later than one month before the expiry date of the initial permit. The permanent permit is valid for five years and is renewable for the same period, provided that the applicant can furnish proof of continuous residence for at least three years in Armenia. The special permit, issued only to foreign nationals of Armenian origin, is valid for ten years and renewable.

In reply to the Committee, the report points out that the authority responsible for examining work permit applications is the same as for residence permits, but does not specify which authority. The Committee reiterates its question.

*Relevant statistics*

The Committee previously (Conclusions 2007) requested statistics on applications for grant/renewal of residence permits lodged by nationals of States Parties and on the number of accepted applications or refusals.
In reply, the report emphasises that figure-supported data of this kind cannot be obtained as the legislation now stands. The Committee points out that if the next report does not contain such data, there will

be nothing to show that the existing regulations are applied to these nationals in a spirit of liberality.

*Conclusion*

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

*Paragraph 2 – Simplifying existing formalities and reducing dues and taxes*

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

It stresses that unless the next report answers the questions put by the Committee, there will be nothing to show that the situation in Armenia is in conformity with Article 18§2 of the Revised Charter.

*Administrative formalities*

The Committee asked previously (Conclusions 2007):

– whether, for foreign nationals not already in Armenia, it was possible to apply for a residence permit and complete the relevant formalities in their country of origin;
– what was the average time taken to obtain a residence permit after lodging a formal application with the competent authority.

In the absence of a reply, it reiterates its questions.

The Committee also asks that the next report provide further information on the conditions for having a work permit issued and renewed.

*Chancering dues and other charges*

According to the report, applications for residence permits are subject to the payment of fees amounting, respectively, to 105,000 Armenian drams (AMD, about 281 €) for a temporary permit, 140,000 AMD (almost 321 €) for a permanent permit, and 150,000 AMD (about 344 €) for a special permit. Renewal of the permit also carries a fee, the amount of which is unchanged for a temporary permit, whereas renewals cost 200,000 AMD (almost 46 €) for the permanent permit and 12,000 AMD (about 28 €) for the special permit. The Committee finds these figures high. It recalls having

considered earlier (Conclusions XV-2, Austria) that it was unjustified to charge even modest fees at the application stage, and invites the Government to explain the reasons for maintaining the practice. The Committee also wishes to know whether the fees can be waived or reduced in certain circumstances. Meanwhile it reserves its position on this point.

*Conclusion*

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

*Paragraph 3 – Liberalising regulations*

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

It stresses that unless the next report answers the questions put by the Committee, there will be nothing to show that the situation in Armenia is in conformity with Article 18§3 of the Revised Charter.

*Access to national labour market*

The Committee notes that employment of foreign nationals is particularly contingent on the existence of a demand for manpower in a specific sector. It asks that the next report provide further information on the authority responsible to acknowledge the existence of a demand for manpower in a specific sector. The Committee also wishes to know whether certain jobs are closed to foreign nationals and on what grounds.

*Exercise of employment*

The report confirms that the regulations in the matter do not, as things stand, subject the employment of foreign workers to separate rules from those governing Armenian nationals. The Committee wishes to be kept informed of the development of the relevant legislation.

*Consequences of loss of employment*

In reply to the Committee, the report states that, in case of termination of the employer's activities, any foreign worker may enter into a new employment contract with another employer within the

term of validity of his work permit, provided that it is still valid for three months and the new employer has received permission from the authority responsible for examining the application for renewal of the work permit.

According to the report, renewal of the residence permit is closely linked with the validity of the work permit. Consequently, when the work permit expires no foreign worker having lost a job may remain in the country. It recalls that where such is the case Article 18 of the Revised Charter requires extension of the validity of the residence permit to provide sufficient time for a job to be found (Conclusions XVII-2, Finland). Accordingly, the Committee enquires whether a change of legislation is contemplated to enable foreign workers who have lost their jobs to remain in the country in order to seek new employment, while making an application for renewal of the work permit and residence permit.

*Conclusion*

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

*Paragraph 4 – Right to leave the country*

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

According to the report, all persons with the right to reside in Armenia are entitled to leave, and return to, the country.

In reply to the Committee, the report states that under current legislation, all Armenian citizens over the age of 16 must possess a passport. Passports are valid for ten years and may be renewed for five years. A fee of 1,000 Armenian drams (AMD) (about € 2) is charged for all passports issued.

No reference is made in the report to particular circumstances in which a passport application can be rejected. The Committee repeats its request. It also asks for information on any changes in the legislation in this field.

In reply to the Committee, the report describes cases in which the courts can impose restrictions on the right of nationals to leave the country. For instance, where preventive measures are imposed on a suspect or the accused in a criminal case, the person concerned

may not leave the country. Measures of this type must be ordered by a public prosecutor, a court or an investigating judge and must be deemed necessary for the purposes of collecting evidence or to prevent the accused from influencing witnesses in any way or from committing an offence or crime. These matters are considered in the light of aspects such as the accused's age and physical condition. Injunctions prohibiting defendants from leaving the country are served on the persons concerned in writing and will also include other constraints such as the requirement to seek authorisation if they wish to change their place of residence.

*Conclusion*

The Committee concludes that the situation 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 Armenia's report.

*Equal Rights*

The Constitution *inter alia*, prohibits discrimination on grounds of gender. The Labour Code further provides that gender discrimination in employment is prohibited.

The Committee asks whether there is express legislation governing equal pay for work of equal value. 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 Armenia 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.

Article 20 guarantees equal treatment with regard to social security. Equal treatment with regard to social security implies the absence of any discrimination on grounds of sex, particularly as far as the scope of schemes, conditions of access to schemes, the calculation of benefits and the length of entitlement to benefits are concerned. The Committee asks whether there is equal treatment in matters relating to social security.

The Civil Procedure Code provides that an interested persons may apply to the courts in order to ensure the protection of their rights, further persons who have legal competence may apply to the courts

for the protection of the rights of other interested persons. The Committee asks whether this means that for example trade unions may take cases on behalf of employees who believe that they are victims of gender discrimination, it also asks whether the express consent of the alleged victim is required. The Committee notes that in addition claims of discrimination against state bodies may be lodged with the Human Rights Defender, the Committee wishes to receive further information on this.

If the Labour Inspectorate finds, in the course of its duties that a contract of employment is discriminatory on grounds of sex, the contract will be "deemed illegal". The Committee asks what are the consequences of this.

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 present case, this consists of ensuring that, where a person believes he or she has suffered as the result of non-compliance with the principle of equal treatment and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of equal treatment. The Committee seeks confirmation that this is the case in Armenia.

The report refers to reinstatement and financial compensation for victims of discrimination. However the Committee wishes to receive further information on these remedies; in particular it recalls that it has held that under Article 20 anyone who suffers discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender.

Adequate compensation means:

- reinstatement or retention of employment and compensation for any pecuniary damage suffered in the event of unlawful or unfair dismissal;
- compensation proportionate to the damage suffered, i.e. to cover pecuniary and non-pecuniary damage, where the dismissed employee does not wish to be reinstated or continuation of the employment relationship is impossible;

– in all other cases, bringing the discrimination to an end and awarding compensation proportionate to the pecuniary and non-pecuniary damage suffered.

In accordance with these principles, the Committee considers that compensation should not be subject to an upper limit as this prevents it from being proportionate to the damage suffered and hence adequate

The report proves no information as to whether there are any occupations reserved exclusively for one sex. The Committee repeats its request for this information.

*Specific protection measures*

The Committee notes the information provided in the report on special measures for pregnant women, women who are breastfeeding and women with young children. It will examine these during its next examination of Article 27 and Article 8 of the Revised Charter.

*Position of women in employment and training*

The Committee notes the high rate of women in employment

The Committee wishes to receive information any segregation in the labour market and on any pay gap between women and men.

*Measures to promote equal opportunities*

The Committee notes that the report provides little information on measures taken to eradicate discrimination and ensure equal opportunities. Under Article 20 states must take practical steps to promote equal opportunities. Appropriate measures include:

– adopting and implementing national equal opportunities action plans;
– requiring individual undertakings to draw up enterprise or company plans to secure greater equality between women and men;
– encouraging employers and workers to deal with equality issues in collective agreements;
– setting more store by equality between women and men in national action plans for employment.

As regards the issue of equal pay appropriate classification methods must be devised in order to compare the respective values of different jobs and carry out objective job appraisals in the various sectors of the economy, including those with a predominantly female labour force. Domestic law must make provision for comparisons of pay and jobs to extend outside the company directly concerned where this is necessary for an appropriate comparison.

States must promote positive measures to narrow the pay gap as much as possible, including:

- measures to improve the quality and coverage of wage statistics;
- steps to ensure that more attention is paid to equal pay for women and men in national action plans for employment.

The Committee asks the next report to provide information on all measures taken to promote equal opportunities, including measures taken to ensure equal pay for work of equal value.

*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 Armenia's report.

*Scope*

The Committee refers to its previous conclusion on Article 24 (Conclusions 2007, Armenia) where it has found the scope of the provisions dealing with the protection against dismissal to be in conformity with 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 as stipulated in Section 113 of the Armenian Labour Code. It asked for further information on how Article 113 of the Labour Code is interpreted by the courts and asked in particular for further information on the interpretation of economic reasons (Section 113§3) and on the state of health (Section 120) as grounds for termination of an employment contract.

As regards termination of employment because of changes in the volume of production or its structure due to production needs, i.e. on economic grounds, the report specifies that in this case the employer is obliged to inform the employee of his intention to terminate the employment contract two months prior to the dismissal. The employee is further entitled to a severance payment in the amount of his/her average monthly salary.

In reply to the Committee, the report further clarifies that deterioration of the employee's health status can be a valid ground for the termination of the employment contract if pursuant to a corresponding medical exam, the deterioration is permanent and renders it impossible for the employee to continue his work.

The Committee reiterates its request for a summary of significant case law showing how the valid grounds for termination of employment as stipulated in Section 113 of the Labour Code 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.

The Committee further observed in its previous conclusion that an employee may be dismissed on the grounds he/she has reached the retirement age. However, the Committee also observed that the Labour Code prohibits the dismissal of an employee on grounds of age, except in cases where the employee is already entitled to a full old age pension or is in receipt of it. The report specifies in this context that the pension age is fixed by the Law on Pensions which, stipulates in its Article 12 that a person having reached the age of 63 is entitled to a pension. According to Article 31 of the same Law a so-called "social pension" is awarded to a person at the age of 65 who does not fulfil the conditions for an entitlement to the contributory pension scheme.

The Committee asks whether in addition to the above rules on pensionable age, Armenian law provides for termination of the employment relationship on the grounds that an employee has reached a certain retirement age (mandatory retirement ages set by statute, contract or in a collective agreement). It further asks what is the consequence on the employment relationship once an employee has reached such age. The Committee asks in particular whether the law prescribes or provides for termination of the employment relationship on the ground 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 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 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 Armenian law in its Conclusions 2007 and found the situation to be in conformity with the Revised Charter.

*Remedies and sanctions*

The Committee previously noted that an employee who considers that he has been unlawfully dismissed may appeal to the courts and is entitled to compensation. It further appears from the report that the courts may order reinstatement of an employee unlawfully dismissed and the Committee asks the next report to confirm that this is actually the case. The Committee further asks whether compensation awarded to an employee in the event of an unfair dismissal is subject to a ceiling.

In its Conclusions 2007, the Committee also noted that in proceedings regarding unfair dismissals, the burden of proof lies with the plaintiff. The report specifies that each party has to provide the facts and evidence supporting its position. 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 clarify whether Armenian law provides for such an adjustment.

*Conclusion*

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

# Chapter 4 – Conclusions concerning Articles 1, 9, 20 and 24 of the Revised Charter in respect of Azerbaijan

## 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 Azerbaijan on 2 September 2004. 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 Azerbaijan submitted it on 4 December 2007.*

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).

Azerbaijan has accepted these articles with the exception of Articles 10, 15, 18 and 25.

The applicable reference period was 1 November 2004 – 31 December 2006.

The present chapter on Azerbaijan concerns 7 situations and contains:

– 1 conclusion of conformity: Article 24;
– 1 conclusion of non-conformity: Article 20.

In respect of the 5 other situations concerning Articles 1§1, 1§2, 1§3, 1§4 and 9, 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 Azerbaijani 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 Azerbaijan's report.

*Employment situation*

The Committee notes that according to Eurostat, Azerbaijan experienced strong growth during the reference period (34.5% in 2006, whereas it was 10.1% in 2004).

It requests that the next report state the employment rate.

The Committee notes from another source[1] that unemployment stood at 8.5% in 2005. According to the report, the official figures for female and youth unemployment were 12.2% and 17.7% respectively in 2006. The Committee wishes the next report to show how the situation of young people and women with regard to unemployment has developed throughout the reference period.

It asks for information on the long-term unemployed as a proportion of all unemployed and the youth unemployment rate (among 15-24 year-olds). In the absence of any information in the report, the Committee asks for the statistics on unemployment among persons with disabilities and minorities.

*Employment policy*

The report indicates that the principal medium-term objectives of the employment policy pursued by the Government are to increase workers' competitiveness, encourage entrepreneurship and combat unemployment.

The Government has also made protection of unemployed and vulnerable persons one of the priorities of its Employment Strategy for 2006-2015 and has set the following specific objectives up to 2010:

– to reduce the level of unemployment significantly;
– to enhance the social protection of vulnerable persons;

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[1] Website of the International Labour Organisation : www.ilo.org

– to improve the functioning of the labour market.

Various active measures (training, upgrading of skills, direct job creation) have been taken on behalf of persons with disabilities, women, young people, refugees and the elderly, through schemes to promote youth entrepreneurship, creation of regional training centres, and measures of positive discrimination in access to employment especially.

The report also mentions a programme to develop employment opportunities in the regions, aiming to create 600,000 jobs within five years. The Committee asks to be informed of the results of this programme.

In view of the scarcity of the information in the report, it requests that the next report answer the following questions:

– what is the number of beneficiaries of active measures for all categories of job seekers?
– how much time elapses, on average, between a person's registering as unemployed and being offered the benefit of an active measure for employment?

The Committee also asks whether specific employment programmes in favour of refugees are envisaged and for information on the results in terms of employment obtained by the beneficiaries of training measures.

According to the report, the total figure for expenditure on employment policy was equivalent to 1.7% of the GDP in 2006, whereas it only represented 0.2% of the GDP in 2004. The Government acknowledges, although efforts are being made to reverse the trend, that a far larger share of this amount is spent on passive measures than on active measures (1.4% and 0.3% respectively).

*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 Azerbaijan's report.

1. Elimination of all forms 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, Albania).

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, Complaint No. 13/2002, decision on the merits of 4 November 2003, §52).

For states such as Azerbaijan that have accepted Article 20, the right to equal treatment and opportunities without discrimination based on sex is considered under this provision.

Under article 25 of the Azerbaijan constitution, all persons have equal rights and freedoms irrespective of race, nationality, religion, sex, origin, possessions, social position, political beliefs or membership of a political party, trade union or social group. Restrictions on or recognition of rights and freedoms based on race, nationality, social status, linguistic origins, beliefs or religion are prohibited. Article 16 of the labour code prohibits discrimination in employment based on citizenship, sex, race, nationality, language, place of residence, social status, social origin, age, family situation, religion, political opinions, beliefs or other factors unrelated to professional qualifications, job performance or professional skills of the employee. Nor is it permitted to grant privileges or restrict rights, directly or indirectly. Special measures on behalf of women, disabled persons, minors and other persons requiring social protection do not

constitute discrimination. Persons who consider that they have been discriminated against may appeal to the courts.

The Committee notes that disability and sexual orientation are not explicitly included in the grounds on which the legislation bans discrimination. The Committee considers that these grounds are included under the formula "other factors unrelated to professional qualifications, job performance or professional skills of the employee". It however asks the Government to confirm this interpretation. It also asks to be informed of any measure taken in order to avoid discrimination, in particular on the basis of these grounds.

The Committee has ruled that the discriminatory acts and provisions prohibited by this provision may apply to all aspects of recruitment and employment conditions in general, including remuneration, training, promotion, transfer, dismissal and other forms of detriment (Conclusions XVI-1, Austria). It asks for information in the next report showing how the aforementioned legal provisions are applied and enforced for each of the forms of employment discrimination prohibited by Article 1§2. It also asks whether there is a national strategy for combating all forms of discrimination in employment.

The Committee asks how the bans on direct and indirect discrimination are enforced.

The Committee has ruled that exceptions to the ban on discrimination may be authorised for essential occupational requirements or to permit positive action (Conclusions 2006, Bulgaria). It asks whether such exceptions are allowed and how they are applied.

The Committee has also ruled that legislation banning discrimination must be effective, and at the minimum must:

– grant authority to set aside, withdraw, revoke or modify any provision in collective agreements, employment contracts and firms' internal regulations that is incompatible with the principle of equal treatment (Conclusions XVI-1, Iceland). The Committee asks what the legislation stipulates in this regard and how it is enforced;
– offer employees who lodge complaints or bring actions in court protection against dismissal or other reprisals by employers

(Conclusions XVI-1, Iceland). The Committee again asks what the legislation stipulates in this regard and how it is enforced;

– provide for appropriate and effective remedies in response to allegations of discrimination. When discrimination is established, the compensation must be effective and proportionate and act as a deterrent. Imposing a predetermined upper limit is therefore not compatible with Article 1§2 as in some cases the compensation awarded may not be commensurate with the loss or damage incurred and not sufficiently dissuasive for the employer (Conclusions 2006, Albania). The Committee asks what remedies are available for persons who think they have suffered discrimination and what compensation is possible if discrimination is found to have occurred. It also asks whether there is an upper limit to the compensation.

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. It asks for a description in the next report of the situation regarding the burden of proof in disputes concerning allegations of discrimination.

The Committee considers that other means of combating discrimination in accordance with Article 1§2 of the Revised Charter include:

– recognising the right of trade unions to take action in cases of discrimination in employment, including action on behalf of individuals (Conclusions XVI-1, Iceland). The Committee asks whether trade unions have this right;
– the right of collective action by groups with an interest in obtaining a ruling that the prohibition of discrimination has been violated. The Committee asks whether such collective action is possible;
– the setting up of a specialised and independent body to promote equal treatment, especially by providing discrimination victims with the support they need to take proceedings (Conclusions XVI-1, Iceland). The Committee asks whether such a specialised body exists.

Regarding discrimination on grounds of nationality, the Committee has ruled that 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. The only jobs from which foreigners may be barred are therefore ones that are inherently connected with the protection of law and order or national security and involve the exercise of public authority (Conclusions 2006, Albania). The Committee asks whether foreign nationals have full access to employment, and in particular whether jobs in the public service are reserved for Azerbaijan nationals and if so how such restrictions are justified.

Finally, the Committee has ruled that excluding persons from the public service, in the form of refusal to recruit or dismissal, because of their previous political activities, is prohibited when it is not "necessary", within the meaning of Article G, because it does not apply solely to departments with responsibilities in the field of law and order and national security or to functions involving such responsibilities (Conclusions 2006, Lithuania). The Committee asks whether such exclusion is possible with regard to past or present political activities and if so in what way it can be deemed necessary, within the meaning of Article G.

2. Prohibition of forced or compulsory labour

The Committee considers that forced or compulsory labour in any form must be prohibited. Failure to apply in practice legislation that is not in conformity with the Revised Charter is not sufficient to bring the situation into conformity with the Revised Charter (Conclusions XIII-3, Ireland).

Forced labour is prohibited under article 35 of the constitution and article 17 of the labour code. The exceptions concern military service, states of emergency and the application of court rulings. Under the criminal code, the use of forced labour is punishable by two years' corrective labour or deprivation of liberty of the same duration. In certain circumstances the sentence may be for five or even ten years. According to the report, no one in Azerbaijan has been found guilty of using forced labour.

*Prison work*

Article 1§2 of the Revised Charter requires strict regulation of prison work, in terms of remuneration, working hours and so on, particularly when the prisoners work for private employers. Prisoners may only be employed by private companies with their consent and in

conditions as close as possible to an employment relationship freely entered into (Conclusions XVI-1, Germany).

Working conditions in prison are governed by the criminal code/execution of judgments code. Prison work is compulsory, except for men over 60, women over 55, disabled prisoners in the first and second categories, women who are more than four months pregnant and women with children living in the prison. Working hours, safety conditions, leave entitlements and pay are in accordance with employment law. Prisoners may be required to work for the prison unpaid for up to eight hours per month or to repair buildings damaged or destroyed by natural disasters or other exceptional events. Deductions from wages are allowed, particularly to cover meals and clothing. At least 25% of their wages must be paid to prisoners.

To complete this information, the Committee 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 employment conditions and how are they set?

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

Several other practices may cause problems from the standpoint of Article 1§2:

*Part-time work*

There must be various legal safeguards attached to part-time work. The Committee needs to know whether there is a minimum working week and whether there are 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 (Conclusions XVI-1, Austria).

The Committee notes that the report fails to deal with this matter. It therefore asks for information in the next report on the legal safeguards attached to part-time work and how they are applied.

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

The Committee considers that in general the conditions to which the payment of unemployment benefits is subjected, including any obligations to take up offered employment, should be assessed under Article 12§1 of the Charter (or Article 12§3 in the case of new developments). However, in certain cases and under certain circumstances the loss of unemployment benefits on grounds of refusal to accept offered employment could amount, indirectly, to a restriction on the freedom to work and as such the situation would be assessed under Article 1§2 (See General introduction to Conclusions 2008, §10).

The Committee has ruled that the right to earn a living in an occupation freely entered upon means that for a reasonable initial period job seekers must be able to refuse job offers that do not correspond to their qualifications and experience without risking the loss of their unemployment benefits (Conclusions 2004, Cyprus). The Committee asks for information in the next report on this subject.

*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 asks whether there is legislation to combat terrorism (or incitement to terrorism) that bars individuals from certain occupations, and if so in which cases and according to what modalities is such legislation applied.

*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 Azerbaijan's report.

The national employment service is principally responsible for providing information and implementing the employment policies, and also for counselling, offering training, finding work for unemployed job seekers and helping employers fulfil their needs. The services used by its clients are free of charge.

During the reference period the public employment services consisted of a national agency and 84 local employment centres spread over the entire territory. The Committee also notes the existence of regional training centres. It requests information on staff numbers for all public employment services.

The Committee notes a certain contradiction in the figures given by the report regarding the total number of job vacancies notified. It asks that the report confirm whether the total number of job vacancies notified to the public employment services did indeed increase during the reference period, rising from 119,498 in 2005 to 150,874 in 2006.

The Committee asks that the next report also indicate the placement rate, that is the ratio between the number of placements and the number of job vacancies notified by employers to the public employment services.

It wishes furthermore to know the average time taken to fill a vacancy.

A number of private employment agencies operate in Azerbaijan. Since 2002, their activity has no longer been subject to the grant of a permit from the Ministry of Labour and Social Protection of Population. According to the report, co-ordination meetings between the Ministry and the agency managers are regularly organised.

The Committee wishes to know how the Ministry assesses whether the private agencies satisfy the conditions necessary to launch such

an agency, and whether the coordination meetings allow the Ministry to evaluate how those agencies are functioning (fees, staff, etc.).

Under the 2001 Law on Employment, trade unions and employers' organisations participate in the management of the National Employment Agency and help to implement national employment policy. Social partners may set up local co-ordination committees, through which they can make known their stance on raising funds or obtaining subsidies for the creation or preservation of jobs.

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 Azerbaijan's report.

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

As Azerbaijan has accepted Article 9 of the Revised Charter (right to vocational guidance), the Committee refers to its conclusion under that article, in which it defers its conclusion. The Committee here only deals with continuing vocational training and training for persons with disabilities in view of the fact that Azerbaijan has not accepted Articles 10§3 and 15§1 of the Revised Charter. The Committee deals with the following questions under Article 1§4, looking in turn at continuing training and the guidance and training of persons with disabilities:

– the existence on the labour market of training services for employed and unemployed persons or of training aimed specifically at persons with disabilities;
– access, i.e. how many people make use of these services;
– the existence of legislation explicitly prohibiting discrimination on the ground of disability in the field of training.

*Continuing vocational training*

According to the employment legislation, all citizens, including the unemployed, are entitled to vocational training. The employment

service co-operates with the education ministry to offer unemployed persons some fifty vocational training programmes to reflect the needs of the labour market and employers. Several public and private regional centres with modern educational facilities provided vocational training to about 1,000 unemployed persons during the reference period.

However, the Committee asks for the next report to provide information on continuing vocational training for unemployed persons.

The Committee wishes to know what is the demand for training placements and 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 and training for persons with disabilities*

Persons with disabilities receive vocational training for 24 occupations and 69 specialties in training and rehabilitation centres, to enable them to find appropriate work. Disabled persons wishing to go into business can enrol in basic business courses run by the employment services. Each year, ten blind persons receive training in the Baku regional vocational centre, leading to such occupations as bookbinding and tailoring. Similar training is organised, under the auspices of the ministry of labour and social protection, for young disabled persons in residential institutions. In 2006, 109 persons found employment, following such training.

The Committee asks whether the training on offer satisfies demand.

According to the report equal treatment is guaranteed to all the persons concerned including nationals of other states party residing or working legally in Azerbaijan, and this applies equally to persons with disabilities.

*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 Azerbaijan's report.

As Azerbaijan has not accepted Article 15 of the Charter, measures relating to vocational guidance for persons with disabilities are dealt with here.

*Vocational guidance within the education system*

a. Functions, organisation and operation

Under the Employment Act, secondary school pupils and students in higher education are entitled to free vocational guidance. Counselling forms part of the public services and is provided through the vocational guidance offices in the cities of Baku, Ganja, Nakhchivan and Mingachevir.

The Committee asks for information in the next report on the organisation of vocational guidance in the education system, including for the disabled persons, and for a description of how it operates in practice. It asks whether guidance services are provided within schools and education establishments.

b. Expenditure, staffing and number of beneficiaries

The report states that the budget for vocational guidance and training was € 145,000 in 2005 and € 146,300 in 2006. There were five members of staff in total, spread between the centres in Baku, Ganja, Nakhchivan and Mingachevir, and they had qualifications in education, economics and psychology. The total number of beneficiaries of vocational guidance was 2,640 in 2005 and 3,180 in 2006. The report does not state, however, what proportion of the GDP and how many staff are assigned to the school guidance system and how many people benefit from it.

The Committee asks for the next report to provide detailed 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

Under the Employment Act, jobseekers, unemployed people and people without appropriate training are entitled to free individual or collective vocational guidance counselling in the country's vocational guidance offices or the regional branches of the national employment service.

The Committee asks whether the vocational guidance on offer satisfies demand. It also asks for information in the next report on the organisation of vocational guidance in the labour market for the disabled persons.

b. Expenditure, staffing and number of beneficiaries

The only figures provided in the report are those of the total budget for vocational guidance and training (€ 145,000 in 2005 and € 146,300 in 2006), the total number of staff (five for the whole country) and the total number of beneficiaries (2,640 in 2005 and 3,180 in 2006); it does not give any details concerning the proportion of the budget and the staff assigned specifically to vocational guidance in the labour market or the number of beneficiaries thereof.

The Committee asks for the next report to provide detailed information on expenditure, staffing and the number of beneficiaries of vocational guidance in the labour market.

*Dissemination of information*

A computer programme and a multi-media tool provide advice to jobseekers on over 300 occupations and specialisations. It is used successfully by the employment services.

The Committee asks whether vocational guidance information is also available in other forms (in-house information, publications, brochures, catalogues, etc.).

*Equal treatment of nationals of the other States Parties*

Under Article 13 of the Labour Code and section 6.2.8 of the Employment Act, foreign nationals and stateless persons living in Azerbaijan have the same rights and duties as Azerbaijani citizens,

without discrimination, in their dealings with the employment services.

*Conclusion*

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

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

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

*Equal rights*

The principle of equal treatment for men and women is enshrined in Article 25 of the Constitution of the Azerbaijan Republic, where it is also stated that any limitations of rights and freedoms on the ground of sex are prohibited. This principle is also embodied in the provisions of the Labour Code, the Law on Gender Equality, and other texts.

One of the main pieces of legislation in this area is the Law on Gender Equality adopted on 10 October 2006, which aims at eliminating all forms of discrimination based on sex and at creating equal opportunities for men and women in political, economic, social, cultural and other spheres of public life. Article 7 of the Law deals with equal treatment as regards access to employment, working conditions, career development and vocational training. There are provisions in the Law to ensure there is no discrimination on grounds of sex in the selection criteria for access to jobs (for example, the prohibition to set out different requirements for men and women in vacancy announcements or to ask for data on civil status or private life of the person seeking the job).

The Labour Code also deals with questions of equal treatment in employment. Article 16 stipulates that a person subject to discrimination has the right to seek recourse in a court of law. As to where the burden of proof lies in gender discrimination cases, the report states that under Article 6 of the Law on Gender Equality, when men and women are treated differently in employment, "the employer should justify, at the demand of the employee, that different treatment was not linked to sex". The Committee asks whether the latter provision refers to an adjustment of proof in a judicial process. It recalls that the burden of proof required under Article 20 consists in ensuring that where a person believes he or she has suffered as a result of non-compliance with the principle of equal treatment and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the

defendant to prove that there has been no infringement of the principle of equal treatment.

The report lacks information on three essential points concerning the legal framework on gender equality. Firstly, the Committee asks if the law makes provision for the protection of employees – against dismissal or other retaliatory action by the employer – for having complained or brought legal proceedings on grounds of a breach of the principle of equal treatment. Secondly, it also wishes to receive information on remedies available to women who have been discriminated against, and recalls that under Article 20 anyone who suffers discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender. Compensation should therefore not be subject to an upper limit as this prevents it from being proportionate to the damage suffered and hence adequate. Thirdly, the Committee asks if the right of women and men to "equal pay for work of equal value" is enshrined in legislation, as required under Article 20.

It is not prohibited under the Charter for States to entrust certain jobs and occupational activities to persons of one sex, if this is due to the nature or the conditions in which such jobs and activities are carried out. Such exceptions are however subject to strict interpretation.

The Committee notes that under Article 241 of the Labour Code, "employment of women is prohibited in labour intensive jobs, in hazardous workplaces, as well as in underground tunnels, mines and other underground work". The Committee considers that while the prohibition for women to work in mines responds historically to a concern for protection, it cannot be considered as positive action or as a measure aimed at ensuring equal opportunities, as it is not favourable for women, on the contrary it restricts their access to certain jobs. Whilst the 1961 Charter did prohibit the employment of women workers in underground mining, as well as in other dangerous, unhealthy or arduous work, this was modified in the Revised Charter, where the prohibition for women to carry out such jobs was limited to the case of maternity. Therefore, bearing in mind social developments which have operated since the drafting of the original Charter, the Committee considers there is no longer a justification for excluding women from all labour intensive jobs or from employment in underground mining. Article 241 of the Labour

Code, by containing such a prohibition, is therefore contrary to the principle of equality enshrined in Article 20 of the Revised Charter.

*Specific protection measures*

The Labour Code establishes that pregnancy or having a child under the age of 3 is a forbidden ground for refusing to sign an employment contract with a woman (Article 241).

*Position of women in employment and training*

The report states that the employment rate of women in 2006 was 48.1%. It also indicates that 51% of persons registered as unemployed that year were women. The Committee wishes to receive updated information in the next report on female employment, unemployment and part-time employment rates.

It also asks for information on any pay gap between women and men, i.e. the difference between the average pay level of male and female employees.

*Measures to promote equal opportunities*

The State Committee on Women's Issues was established by a Presidential Decree in 1998 with a view to implementing the State policy on gender equality (since 2006 it is called State Committee on Family, Women and Gender Issues). The main objectives and purposes of the Committee are the protection of the rights of women, and increasing the participation of women in social and political life.

In June 2000, the National Action Plan on Women Issues for 2000-2005 was adopted. This program was elaborated on the basis of Beijing Strategies taking into consideration the national priorities. It covers political, social, economic, cultural, educational and health spheres, as well as problems of refugee and internally displaced women. The National Action Plan includes both the participation of state structures and NGOs.

The Committee notes from another source[1] that among the reasons for the low participation of women in social, political and public life of the country are the existing traditional stereotypes of the image of woman in society, whose role is limited by the boundaries of family. This situation demands a new approach to the national gender equality strategy. The authorities are presently in the process of building the national machinery to develop gender strategies and to incorporate a gender component in practical activities within the Government.

In this respect, the gender focal points in ministries form part of the working group under the State Committee for Women's Issues which meets every month to elaborate a new gender policy within each ministry, and to discuss what has been done in this field.

The Committee asks the next report to provide information on any steps or measures taken to ensure that more attention is paid to equal pay for men and women in national plans and/or collective agreements.

*Conclusion*

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 20 of the Revised Charter on the ground that legislation prohibits the employment of women in underground mining and all other labour intensive jobs.

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[1]Ministry of Foreign Affairs, Gender issues, on:
http://www.mfa.gov.az/eng/foreign_policy/inter_affairs/human/gender.shtml

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

The Committee takes note of the information provided in Azerbaijan'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 24a 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 24b).

*Scope*

Pursuant to Sections 51 and 54 of the Labour Code, employment contracts may be subject to a probationary period of a maximum of three months. Either party may terminate the contract at the end of the probationary period by giving the other party a three days written notice.

It appears from the information provided in the report, that apart from the exception of probationary periods, the provisions of the Labour Code governing termination of employment apply to all employment relationships governed by an employment contract and the Committee asks the next report to confirm that this is actually the case.

*Obligation to provide a valid reason for termination of employment*

Section 70 of the Labour Code enumerates the grounds upon which an employment contract may be terminated at the employer's initiative, like in the event:

"a) the enterprise is liquidated;
b) there is a cutback in the number of employees in the enterprise;
c) a competent body decides that the employee does not have the professional skills for the job he holds;
d) the employee does not fulfil his job description or fails to perform his duties as defined by the employment contract and job description."

As regards termination of employment contracts following liquidation of the enterprise or because of a cutback of personnel (Section 70 a and b of the Labour Code), i.e. termination based on economic reasons, Section 71 of the Labour Code specifies that if an enterprise is split up, merged with another enterprise, reorganized, its organizational or legal form is changed or the number of employees is reduced, or positions abolished, the possibility of transferring the employee to another job must be looked into by the employer. It appears that only if there is no such possibility the employment contract may be terminated. Furthermore, Section 78 provides for rules on the order in which certain categories of employees should be made redundant or be retained in the event of personnel cutbacks.

As regards the reasons for termination of employment under Section 70 d related to the capacity or conduct of the employee (violation of contract), Section 71 specifies that termination in this context is possible in the event an employee has deliberately or negligently violated his obligations resulting from the employment contract or applicable law. Section 72 of the Labour Code enumerates cases constituting gross violations of work obligations in accordance with the job description. According to Section 186 para. d), cancellation of the employment contract in accordance with subsection c of Section 70 is considered as being a disciplinary action.

Concerning termination of employment due to lack of professional skills to perform the job (Section 70 c), it is specified that such incapacity has to be decided upon the employers request by the "Certification Commission" as described in Section 65 of the Labour Code, consisting of professionals and trade union representatives. Neither the employer nor the employee's supervisor may be a member of the Commission. Pursuant to Section 67 of the Labour Code, the employment contract of an employee for whom the

Certification Commission has rendered a decision on non-compliance with his position may be terminated by an employer in accordance with Article 70. Employers may also transfer employees to another appropriate position with the employee's consent by taking into account the Certification Commission's recommendations. The Committee notes that the decisions of the Certification Commission may be appealed against with the courts. It asks the next report to provide further information on the work and composition of the Certification Commission in particular on how its independence from the employer is ensured. It further asks whether the decision of the Commission on the incapacity of the employee serves as a prima facie evidence that a dismissal was justified on the occasion of a court procedure regarding a dismissal.

Section 74 of the Labour Code furthermore lists a number of grounds of termination of an employment contract which are described as "not depending on the will of the parties" such as in the event:

"a) the employee is called for military or alternative service;
b) the person who held the job previously is reinstated by a legally valid court ruling;
c) the employee cannot perform his job for more than six months because of full and permanent disability unless the law sets a longer period;
d) a court sentences the employee to prison;
e) the employee's incompetence is confirmed by a court decision that has taken legal effect."

The Committee understands that in these cases even though the termination is "not depending on the will of the parties" it is nevertheless in the employer's discretion whether he wants to terminate the employment contract or not and thus termination is effected at the employer's initiative.

As regards termination following a call for military or alternative service (Section 74 a) the Committee asks whether employees have a right to be reinstated after having completed their service. Concerning termination of an employment relationship because of reinstatement of the person previously holding the post (Section 74 b), the Committee asks whether an employee may be dismissed even though reinstatement of the previous holder of the post occurs several months or years after he has taken over the post.

The Committee further notes that in the event employment is terminated because the employee can not perform his/her function due to a complete loss of labour capacity for longer than six months (Section 74 c), the Medical and Social Expert Commission, a Government Agency, establishes the category of disability and the employee is considered to be incapable to perform his/her post for at least a year. The Committee asks to what extent the decisions of this Commission are subject to judicial review. It notes from the report that there is a number of court case examples in this respect by employees claiming their employment relationships have been terminated unlawfully in this context and asks the next report to provide information in this respect.

The Committee recalls that when assessing the conformity of the situation as regards dismissal without notice in the event of permanent disability, it will take account of the following factors and asks relevant information to be included in the next report:

– is dismissal without notice for reasons of permanent invalidity permitted regardless of the origin of the invalidity? In particular, may this occur in cases of employment injuries or occupational diseases?
– are employers required to pay compensation for termination in cases of permanent injury?
– if, despite the permanent invalidity, the worker can still carry out light work, is the employer required to offer a different placement? If the employer is unable to meet this requirement, what alternatives are available?

It notes in this respect that Section 77 para. 7 of the Labour Code stipulates that in the event an employment relationship is terminated because of permanent disability, the employer is obliged to pay to the employee an allowance equal to twice the average monthly wage.

Finally, the Committee recalls that a prison sentence delivered by a court, can be a valid ground for termination if such sentence is delivered for employment-related offences. This is not the case with prison sentences for offences unrelated with the person's employment, which cannot be considered valid reasons unless the length of the custodial sentence prevents the person from carrying out their work (Conclusions 2005, Estonia). The report states in this respect that dismissal is permitted on the ground of prison sentences

for offences unrelated with the employee's employment in the event of a life sentence or sentences for a certain period of time. The Committee asks the next report to specify as from which duration a prison sentence for reasons not related with the employment would justify termination of employment.

The Committee takes note of the summary of decisions of national courts in dismissal cases showing how the aforementioned valid grounds for termination of employment are interpreted in practice. It notes in particular from the information provided that courts are empowered to review the facts underlying a dismissal that is based on economic grounds invoked by the employer.

Furthermore, the Committee asks whether Azerbaijani 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 are fixed in Azerbaijan 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.

Sections 83 and 84 of the Labour Code stipulate that notice of termination of an employment contract has to be effected in writing and indicate the grounds for the 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".

Section 74 of the Labour Code specifies that temporary disability for a period of less than 6 months shall not be a valid ground for termination of the employment contract and workers temporarily disabled shall be paid a mandatory social insurance allowance and their workplace and position shall be retained. Section 79 of the Labour Code explicitly prohibits the dismissal of employees that are temporarily disabled and the report indicates that this covers any temporary loss of labour capacity which is understood to cover illness.

As regards retaliatory dismissals the report states that such a dismissal would not be based on the valid reasons for termination of employment as set out in the Labour Code and would therefore be considered as being unlawful by the courts. The Committee asks the next report to provide examples of pertinent case law, establishing that employees are protected against retaliatory dismissal if they turn to the courts or another competent authority to enforce their rights.

*Remedies and sanctions*

Employees considering that their rights and legally protected interests have been violated may have recourse to the courts (Sections 9 (q), 288, 292, 294 and 295 of the Labour Code).

Pursuant to Section 71 (3) the employer shall be obliged to prove the necessity of terminating the employment contract on the grounds as set out in Section 70 of the Labour Code.

Section 195 of the Labour Code stipulates that employers shall bear full financial liability for damages in the event a court decision has established that the dismissal was unlawful and have to pay compensation for financial and moral damage in the amount set out in the court decision. The Committee asks whether the law provides for a cap on compensation ordered by a court in the case of an unfair dismissal. Section 300 of the Labour Code further specifies that in the event of an unlawful dismissal at the initiative of the employer, the court shall decide on the reinstatement of the employee.

*Conclusion*

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

# Chapter 5 – Conclusions concerning Articles 1, 9, 10, 15, 18, 20 and 25 of the Revised Charter in respect of Belgium

## 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 Belgium on 2 March 2004. The time limit for submitting the 2nd report on the application of the Revised Charter to the Council of Europe was 31 October 2007 and Belgium submitted it on 7 March 2008. An addendum to the report was submitted on 19 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),
– 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),
– right of workers to the protection of claims in the event of insolvency of the employer (Article 25).

Belgium has accepted these articles with the exception of Article 24.

The applicable reference periods were:

– 1 May 2004 – 31 December 2006 for Articles 1, 18 and 20;
– 1 January 2005 – 31 December 2006 for Articles 9, 10, 15 and 25.

The present chapter on Belgium concerns 19 situations and contains:

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

In respect of the 5 other situations concerning Articles 1§2, 10§4, 18§2, 18§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 next Belgian 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 Belgium's report.

*Employment situation*

The Committee notes that, according to Eurostat, growth slowed slightly during the reference period, to 2.8% in 2006 compared with 3% in 2004.

The employment rate continued its upward trend during the reference period, from 60.3% in 2004 to 61% in 2006, as did the female employment rate (from 52.6% in 2004 to 54% in 2006). The Committee notes that these rates are still lower than the EU-15 average.

Although the overall unemployment and female unemployment rates remained stable, at 8.2% and 9.3% respectively in 2006, the rate among young persons (15-24) fell, from 21.2% in 2004 to 20.5% in 2006.

The number of the long-term unemployed as a proportion of all unemployed increased from 49% in 2004 to 51.2% in 2006.

The Committee notes that the youth unemployment rate and the number of long-term unemployed as a proportion of all unemployed were higher than the EU-15 average.

The report states that the employment rates of EU-15 and non-EU-15 foreign nationals during the reference period were 62.3% and 40.6% respectively.

In reply to the Committee, the report states that in 2002, the unemployment rate for people with disabilities was 11.4%. The Committee asks for up-to-date information in the next report.

*Employment policy*

The report states that the main focuses of employment policy are still as follows:

– support for training;

– help for jobseekers wishing to re-enter the labour market;
– fiscal incentives;
– promoting the employment of older workers.

The aim of the fiscal incentives at the federal level is both to support jobseekers and low-income workers financially (through tax credits for low incomes for example) and encourage people to return to work or stimulate job creation in certain specific sectors (particularly in the hotel trade, catering, research and the audiovisual industry).

The report also describes the introduction of measures to encourage people over 50 to return to work (such as employment and back-to-work bonuses).

In both the Flemish Communities and Walloon Region, emphasis was also placed on support for unemployed persons and access to training at the behest of the Flemish employment service (VDAB) and the FOREM in the Walloon Region, particularly for young people and the long-term unemployed. The same remark goes for the Brussels Region. Two of the main objectives set by the Flemish Government are to be approaching a general employment rate of about 70% by 2010 and for all jobseekers to have access to an active measure before reaching their sixth month of unemployment as part of a personalised job-hunting strategy. The Committee asks to be informed of the results of these activities in the next report.

According to the report, unemployed people in the Flemish Community are required to be actively seeking employment to be entitled to unemployment benefit.

The Committee also notes that according to the report, 2,487 people took part in training programme in 2005, and 55.5% found work as a result. 20.1% of the long-term unemployed (i.e. 34,852 people) participated in an active measure in 2006, compared to 19.4% (or 35,370) in 2005.

The Committee notes that 39,662 jobseekers were able to take up jobs that had been created in 2005 in the Flemish Community. It asks for the next report to set out the total number of beneficiaries of active measures in each of the different Communities.

In the absence of any information on measures taken in the German-speaking community, the Committee asks for this information to be included in the next report.

It asks information on any measures designed to promote the integration of immigrants and people with disabilities into the labour market.

The Committee notes that total spending on active and passive employment policy measures remained stable during the reference period and was the equivalent in 2006 of 3% of GDP. The portion of this spending allocated to active measures also remained stable (at 0.9% of GDP in 2006). These rates are above the EU-15 average.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Belgium 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 Belgium'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 (Conclusions XVIII-1).

Where a state party has accepted Article 15§2 of the Charter, the Committee will examine legislation prohibiting discrimination on grounds of disability under this provision. Likewise, where a state party has accepted Article 20 of the Revised Charter, as in the case of Belgium, it will consider the right to equal treatment and equal opportunities without discrimination on grounds of sex under that provision.

Legislation should cover both direct and indirect discrimination (Conclusions XVIII-1, Austria). As regards indirect discrimination, the Committee recalls having stated that Article E of the Revised Charter prohibits: "all forms of direct discrimination. 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 13/2000, decision on the merits of 4 November 2003, §52).

The law of 25 February 2003 strengthened the prohibition against discrimination on grounds of sex, race, colour, national or ethnic origin, sexual orientation, civil status, birth, wealth, age, religious or philosophical convictions, health status actual or future, disability and physical characteristics.

In previous conclusion, the Committee requested several items of information which are not included in the report. The Committee therefore repeats its request for:

– information on how the notion of age discrimination has been interpreted;
– examples of genuine occupational requirements that allow exceptions to be made to the prohibition of direct and indirect discrimination;
– activity reports or other publications of the Centre for Equal Opportunities and the Fight against Racism, relevant to Article 1§2.

The Committee notes 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. According to another source[1], under Article 19§3 of the law of 5 February 2003, the burden of proof may be reversed in civil actions alleging discriminatory practices. The Employment Tribunal of Brussels has already availed itself of this possibility in a case involving discrimination in employment on grounds of health.

The Committee recalls that under Article 1§2 of the Charter, remedies available in cases of discrimination must be adequate, proportionate and dissuasive. It therefore considers that the imposition of pre-defined upper limits to compensation that may be awarded are not in conformity with the Charter as in certain cases, these may preclude damages from being awarded which are

[1] European Anti-Discrimination Law Review, edition no. 5, 2007, p.59.

commensurate with the loss suffered and sufficiently dissuasive to the employer (Conclusions XVIII-1).

The legislation enacted on 25 February 2003 provides for the possibility of reintegration in discrimination cases and provides for compensation to be awarded equivalent to six months' pay or compensation proportionate to the damage suffered. The Committee found in its previous conclusions that the situation was in conformity with the Charter on this point.

The Committee recalls that under Article 1§2 of the Charter, while it is possible for states to make foreign nationals' access to employment on their territory subject to possession of a work permit, they cannot ban nationals of States Parties in general from occupying jobs for reasons other than those set out in Article 31. Under this provision, restrictions on the rights guaranteed by the Charter are permissible 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 the public interest or national security and involve the exercise of public authority.

In its Conclusions XVII-1, the Committee noted that foreigners may not be employed in federal public service posts that directly or indirectly entail the exercise of state authority or are concerned with safeguarding the general interests of the state. The Committee found that in principle these exceptions were compatible with Article 31 of the Charter, but requested further information on the actual jobs concerned.

Previous conclusions (Conclusions XVIII-1) indicate that it is not possible to give a complete list of jobs in the federal public service that are closed to non-nationals, as it is for each Ministry or organ to decide on the basis of individual jobs whether or not the job involves the exercise of public authority. The report stated, however, that all jobs involving the power to determine violations of legislation, the power to address warnings or commence criminal proceedings were restricted to nationals. The report added that functions related to health and safety at work, social security and social assistance were also restricted to nationals.

The Committee went on to note that such an application of the definition of public authority might be overly broad and asked for more detailed information on the situation, in particular the existence of any guidelines or such like on whether a job could be classified as involving the exercise of public authority.

The present report does not provide the requested information. It states that statutory posts in the federal public service are now open to Swiss nationals except for those related to the exercise of public office, which are restricted to Belgian nationals. As regards contractual posts in the same public service, the royal decree of 25 April 2005 reiterates the requirement for Belgian nationality if the jobs involve direct or indirect participation in the exercise of public authority and in functions that are concerned with safeguarding the general interests of the state. The report makes it clear that the restrictions are intended to apply to very specific forms of exercise of public authority.

The Committee notes that it is still unable to make a detailed assessment of the situation. In particular, it asks whether the functions related to health and safety at work, social security and social assistance mentioned above are all functions whose exercise leads to the use of the penal arsenal or which, in any other way, involve strictly speaking the exercise of public authority. It therefore asks that the next report indicate whether nationals of all the parties to the Charter and the Revised Charter have access to federal public service posts and confirm that these jobs are not restricted to certain nationalities such as those of member states of the European Union and the European Economic Area. It also wishes to know what criteria are used by ministries and administrative organs to determine whether a job may be classified as involving the exercise of public authority and asks that a detailed list of jobs reserved for nationals be drawn up on that basis.

2. Prohibition of forced labour

In previous conclusions, the Committee found the situation in Belgium not to be in conformity with the Charter on the grounds that the merchant navy disciplinary and criminal code still made provision for penal sanctions for disciplinary offences even where the security of a ship or the lives or health of the people on board were not at risk, so implying compulsory labour.

The merchant navy disciplinary and criminal code was amended by legislation enacted on 15 May 2006. Now only seamen who commit disciplinary offences which endanger the security of the ship or the lives or health of the people on board are liable to imprisonment. The rest incur a fine. The Committee finds that the situation is in conformity with Article 1§2 of the Charter.

*Prison work*

The Committee has previously noted that work performed outside a prison required the prisoner's consent whereas work inside prisons was compulsory. A law abolishing compulsory work inside prisons was adopted in 2005 and entered into force on 15 January 2007. No prisoner may now be forced to work.

According to the previous report, furthermore, the working conditions of prisoners, whether working for a private enterprise or not, were as close as possible to those of regular workers, including in terms of remuneration.

There are five types of work that may be performed in prison:

– domestic work (cooking, gardening, cleaning, etc.);
– technical work (building maintenance, heating, plumbing, etc.);
– work for outside contractors (packaging, etc. which is carried out in cells or in workshops;
– work in the workshops of the central department of prison work (assembly work, furniture making, etc.);
– work performed by the prisoner on a self-employed basis (translation, bookkeeping, artistic work, etc.). Such work is permitted as long as it does not place too much of a burden on the prison and does not jeopardise order and security.

The Committee finds the situation to be in conformity with Article 1§2 of the Charter in this respect.

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

*Private life at work*

The Committee requests information that would allow it to assess how individual dignity and freedom are protected by legislation or

through case law of courts from interference in private or personal lives that might be associated with or result from the employment relationship (see comments on Article 1§2, General Introduction to the 2006 Conclusions, §13-21).

*Restrictions related to the fight against terrorism*

The law of 19 December 2003 on terrorist offences does not contain any specific occupational prohibition. Ordinary law applies, in particular Article 31 of the Criminal Code.

*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 Belgium's report.

According to the report, the total number of vacancies notified to the VDAB increased from 176,331 in 2005 to 229,956 in 2006. The placement rate increased from 81.9% in 2005 to 85.5% in 2006. The average time needed to fill vacancies in 2006 was 46 days.

The Committee asks for information on the total number of vacancies notified to the FOREM in the Walloon Region and the employment services in the German-speaking community, as well as the placement rate, that is placements made by the various employment agencies as a percentage of the total number of persons recruited on to the labour market, in the Walloon Region.

It emphasises once again that these figures are essential and that if they are not provided, there is nothing to prove that the right to free employment services is guaranteed.

*Conclusion*

The Committee concludes that the situation in Belgium is not in conformity with Article 1§3 of the Revised Charter on the ground that 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 Belgium's report.

As Belgium 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 concluded that the situation is not in conformity with Article 9 of the Revised Charter on the ground that it has not been established that the right to vocational guidance is guaranteed.

In addition, it concluded that the situation is not in conformity with Article 10§3 of the Revised Charter as it has not been established that nationals of other States Parties legally resident or regularly working in Belgium are guaranteed equal treatment as regards access to continuing training.

Finally, it concluded the situation is not in conformity with Article 15§1 of the Revised Charter on the ground that, during the reference period, the anti-discrimination legislation covering education and training for persons with disabilities was inadequate.

*Conclusion*

The Committee concludes that the situation in Belgium 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 Belgium's report and refers to its previous conclusions (Conclusions XVI-2 and 2007), for a general description of the guidance system.

As Belgium 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 2005, after a broad consultation with the stakeholders, the Government of the French Community adopted a Contract for Schools, which contained "ten priorities for our schools", the third of which is entitled "offering each pupil useful guidance". Some of the main measures recommended under this heading are to step up the work of the Community's psycho-medico-social centres (CPMSs) in the area of guidance in schools, improve the training of CPMS staff, raise teacher awareness about guidance in the school system and establish a joint information and guidance service for the French Community, the Walloon Region and the French Community Commission (*Cocof*).

On 14 July 2006, a decree on the goals, programmes and activity reports of CPMSs was adopted with a view to raising the profile of guidance in schools.

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 report contains no information or statistics regarding the expenditure, staffing or number of beneficiaries of guidance services in the French, Flemish or German-speaking Communities. In the repeated lack of information, the Committee concludes that the situation is not in conformity on this point.

From an addendum to the report, the Committee takes note of the statistics on the number of beneficiaries of guidance services among

young people in the French-speaking community in 2007-2008. As this information does not cover the reference period, the Committee asks for the next report to provide up-to-date information on expenditure, staffing and the number of beneficiaries of vocational guidance in all three communities.

*Vocational guidance in the labour market*

a. Functions, organisation and operation

In the Flemish Community, the Flemish Employment and Vocational Training Office (VDAB) provides vocational guidance for both unemployed and employed persons. Since January 2006, new specialised programmes have been on offer to long-term unemployed persons under the career-path development scheme "*Action trajet*", which has been operating since 2004.

In the absence of any reply in the report, the Committee asks again for up-to-date information on the vocational guidance services provided in the labour market of the French and German-speaking communities.

b. Expenditure, staffing and number of beneficiaries

In the Flemish Community, spending on vocational guidance under the VDAB's *Action trajet* scheme was € 36.7 million in 2005 and nearly € 38 million in 2006. Spending on the career-choice services at the new skills centres that have been opened recently was € 2.61 million in 2005 and € 3 million in 2006.

The report gives a detailed description of staffing within the VDAB. There were 706 counsellors in 2006.

In 2005, some 258,000 unemployed people took advantage of some form of vocational guidance (telephone advice, psychological tests, interviews, training, etc.). In 2006, about 250,000 did likewise. As a percentage of total unemployed, the number of long-term unemployed people taking part in the *Action trajet* programme was 3.5% in 2006. 52.4% of unemployed people were women. The VDAB has local offices in 13 municipalities, which provided services for 12,697 jobseekers in 2006.

In 2006, the CPMSs in the German-speaking Community had a budget of just over € 1 million.

In its two previous conclusions (Conclusions XVI-2 and 2007), the Committee asked for information about spending on vocational guidance services and the number of beneficiaries in the French and German-speaking Communities and staffing in the French Community. In the repeated absence of any information in the report, the Committee concludes that the situation is not in conformity on this point.

*Dissemination of information*

In the absence of any information in the report, the Committee asks how information is disseminated in the French Community.

*Equal treatment of nationals of the other States Parties*

In reply to the Committee, the report states that equal access to vocational guidance is guaranteed by the Decree on Equal Treatment in the Labour Market of 17 May 2004. The Committee asks if this Decree applies to all three Communities.

*Conclusion*

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

## 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 Belgium's report.

*Secondary and higher education*

The Committee refers to its previous Conclusions (XVI-2 and 2007) for the description of the secondary and higher education systems which it found to be in conformity with the Charter (Conclusions 2007).

*Measures to facilitate access to education and their effectiveness*

In its previous Conclusion (Conclusions 2007) the Committee asked whether everyone in the French and German-speaking communities enjoyed equal access to secondary and higher education irrespective of nationality. In this regard the Committee notes from the report that no distinction is made between Belgian nationals and foreigners when it comes to access to education. Thus the equality of treatment is guaranteed.

*Conclusion*

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

### *Paragraph 2 – Promotion of apprenticeship*

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

In its previous conclusion (Conclusions 2007) the Committee asked whether there were enough places to satisfy demand for apprentice-ship. It notes that the report does not provide this information, therefore it reiterates its request.

The Committee notes information concerning trainers and monitors and considers that the situation in this regard is in conformity with the Charter.

It also notes from the report that the standard remuneration for apprenticeship ranges from € 410,90 (at 15 years of age) to € 642 (at 21 years or more) per month. For apprentices less than 19 years old, the employer covers certain social security contributions, such as additional contribution for unemployment, annual holidays etc. After their 19th birthday apprentices are covered by all social security branches.

*Conclusion*

The Committee concludes that the situation in Belgium 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 Belgium's report.

*Employed persons*

In its previous conclusion (Conclusions 2007) the Committee took note of the continuing training measures for employed persons in German-speaking and Flemish communities and asked for information on such measures in the French Community.

The Committee notes from the report that in the Walloon Region in some collective agreements in 2006 a new clause has been introduced for 'priority employees' who are defined as those at risk of losing their job if they do not acquire certain professional competence. These competences are validated annually, either by the Public Employment and Vocational Training Service (FOREM) or by professional sectors concerned.

In the German-speaking community the total spending on continuing education amounted to € 4,205,814 in 2006, of which € 186,389 were spent in the framework of the BRAWO system which is comparable to the training vouchers system in other communities. In the Flemish Community the total spending on continuing education,

including specialised vocational training, amounted to € 147,256,742 in 2005 and to € 146,044,269 in 2006.

*Unemployed persons*

In its previous conclusion (Conclusions 2007) the Committee asked for detailed information on the expenditure on continuing training broken down by community and the sharing of the cost of vocational training between public bodies (central and other authorities), unemployment insurance system, enterprises and households.

In this connection the Committee notes from the report that in the Flemish Community the system of training vouchers has been replaced by the Budget for Economic Advice (BEA) in 2006 whereby employers can obtain a refund of 35% of the costs related to training, advice and mentorship. The VDAB helps inform employers about this measure and concludes cooperation agreements on training jobseekers with different sectors. These jobseekers can be oriented to these sectors after the training courses end. The Committee notes that in 2006 a total of 35,562 training sessions have been organised at the request of employers and a total of 2,659 at the request of employees.

In its previous conclusions, the Committee held that the situation was not in conformity with the Revised Charter as it had not been established that nationals of other States Parties lawfully resident or regularly working in Belgium were guaranteed equal treatment as regards access to continuing training. In this regard the Committee notes from the report that all workers (EU or non-EU) residing in the Walloon Region (outside German-speaking Community) who are in a possession of a work permit enjoy equality of treatment as regards access to continuing training. Equality of treatment is also guaranteed in the Flemish Community. However, the report does not provide information about the German-Speaking community. Therefore the Committee reiterates its conclusion of non-conformity.

*Conclusion*

The Committee concludes that the situation in Belgium is not in conformity with Article 10§3 of the Revised Charter as it has not been established that nationals of other States Parties legally resident or regularly working in Belgium are guaranteed equal

treatment as regards access to continuing training in the German-speaking community.

*Paragraph 4 – Long term unemployed persons*

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

The Committee notes from Eurostat that the long-term unemployment rate in 2005 amounted to 51.7% and to 51.2% in 2006. The EU-15 average stood at 41.7% and 42.1% respectively. The Committee observes that this rate has increased by almost 6% since 2003 and remains high.

In its previous conclusion the Committee asked for information on the average number of long-term unemployed persons having participated in vocational training and retraining measures in the French, German-speaking and Flemish communities and how the financial burden of such training was shared between public bodies, employers and households.

The Committee notes from the report that a total of 62,187 persons in 2005 and 62,750 in 2006 in the Flemish Community participated in VDAB training sessions. In 2004 VDAB launched specific 'centres of orientation' for this target group and created 3,000 extra training opportunities. These efforts continued in 2006, resulting in a considerably higher participation of long-term unemployed persons in vocational training.

The Committee notes that the report does not provide information on the French and German-speaking communities. Therefore it asks again what measures were specifically designed to promote retraining and integration of the long-term unemployed.

As regards the sharing of financial burden, the Committee notes that in the French Community it is shared between the unemployment insurance, Walloon Region (structural financing of certain training bodies) and the public employment service which covers the training bonus as well as travelling and other costs.

In its previous Conclusion the Committee also asked whether the equality of treatment regarding access to vocational training for the long-term unemployed was ensured for nationals of other States

Parties legally resident in Flemish and French communities. In this respect it notes from the report that in the Walloon region the vocational training services are accessible to everyone who is regularly resident in the Belgian territory. Having found no reply concerning the equality of treatment in Flemish and German-speaking communities the Committee reiterates its question and holds that if this information is not provided in the next report, there will be nothing to establish that the equality of treatment as regards access to training for long-term unemployed persons is guaranteed to nationals of other States Parties in Flemish and German-speaking communities.

*Conclusion*

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

*Paragraph 5 – Facilities*

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

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

In its previous conclusion (Conclusions 2007) the Committee found that the situation was not in conformity with the Revised Charter in view of the length-of-residence and employment requirements imposed for entitlement to financial assistance for training. It notes that in the Flemish and French Communities there have been no changes to this situation. Therefore, the Committee reiterates its finding of non-conformity.

The Committee notes from the report that every year the department of education of the Flemish Community receives around 160,000 requests for financial aid of which 110,000 are for secondary education. € 77 million is allocated in financial aid, of which € 60 million fall on higher education. The financial aid for secondary education ranges between € 93 and € 618 and is means-tested. For higher education the financial aid ranges between € 201 and € 3,121.

The Committee takes note of the Ministerial circular No. 1461 of 10 May 2006 concerning the free compulsory schooling and equality of chances in the French Community and well as of the Decree of 20 July 2005 on complementary rights in higher education.

*Training during working hours (Article 10§5 c)*

The Committee takes note of the legislative amendments at federal level concerning the system of paid educational leave. Due to an increasing number of beneficiaries, the Government has been obliged to limit its spending on educational leave. For the academic year 2006-2007 the Government did not reimburse to employers their social security contributions paid for hours of educational leave taken by employees, but instead paid a fixed amount of €15-18 per hour of educational leave. The Committee wishes to be informed about these developments and their impact on the amount of educational leave taken.

*Efficiency of training (Article 10§5 d)*

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

*Conclusion*

The Committee concludes that the situation in Belgium is not in conformity with Article 10§5 of the Revised Charter on the grounds that nationals of other States Parties legally resident or regularly working in Belgium are not granted equal treatment regarding 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 – Vocational training for persons with disabilities*

The Committee takes note of the information provided in Belgium's report as well as in the additional information submitted in May 2008.

In its previous conclusion (Conclusions 2007), the Committee asked for figures on attendance by children with disabilities in mainstream and special compulsory and upper secondary education, for all communities. It also asked for figures on vocational training and university education. The Committee notes that not all these figures have been supplied and therefore reiterates its request. It further recalls that where it is known that a certain category of persons is, or might be, discriminated against, it is the national authorities' duty to collect data to assess the extent of the problem (European Roma Rights Centre v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27). The gathering and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of rational policy (European Roma Rights Centre v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23).

*Definition of disability*

The Committee notes that as announced in Belgium's previous report, the Flemish Agency for Persons with Disabilities has been operational since April 2006. According to the decree setting up this agency, disability is defined on the basis of the WHO International Classification of Functioning and Health (ICF 2001). The report adds that in order to qualify for the services (including vocational training courses) and financial assistance provided by the agency, persons with disabilities must meet a number of requirements, including residence in Belgium for a number of years (five years of continuous residence or ten years of non-continuous residence). The Committee refers to its conclusion on Article 10 with regard to equal treatment for nationals of other Contracting Parties and access to vocational training.

The Committee also notes that in July 2007 (outside the reference period), a Protocol on reasonable accommodation was signed by the

Federal State, all the Communities, the Brussels-Region and the Commission on disabled persons of the Communities and that of the French Community. The Protocol contains a definition of disabled persons which will apply to all levels (Federal level and Communities), if ratified by all. The Committee asks the next report to provide information on the scope of application of the Protocol and on its impact in terms of integration of persons with disabilities in education and training.

*Anti-discrimination legislation*

In its previous conclusion the Committee held that Belgium did not have sufficient anti-discrimination legislation covering education. From the additional information provided, it notes that anti-discrimination law has been adopted in May 2007 (outside the reference period). It asks the next report to provide information on its scope of application. Meanwhile, the Committee finds that, during the reference period, the situation was not in conformity with the requirements of Article 15§1 of the Charter. In this framework, 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 education 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 be general anti-discrimination legislation, specific legislation concerning education or a combination of the two (Conclusions 2007, General Introduction, Statement of Interpretation on Article 15§1).

*Education*

Despite the Committee's request, no information is provided on the integration of children with disabilities into mainstream primary education. The Committee therefore reiterates its request (see also above).

The report supplies figures on secondary education in the Flemish Community. According to these figures the number of students with disabilities has increased both in mainstream education (ordinary

schooling with support) and in special education. However, given the lack of other essential data (such as the total number of children in mainstream schooling and the number of children receiving special education), these figures are not sufficient to determine whether the right to education is effectively guaranteed for persons with disabilities.

According to the additional information provided, the Committee notes that the total number of persons with disabilities is unknown in the German Community as disabled persons are not obliged to register with the Office of the German Community for Disabled Persons. However, the report indicates that 5 048 disabled persons (representing between 7 and 10% of the German-speaking population) had registered with this Office in 2007.

The Committee also wishes to know:

– about any steps taken to generally promote integration into mainstream education;
– whether or not the qualifications obtained at the end of their schooling are identical for all children;
– the success rate for children with disabilities as regards access to vocational training, further education and entry into the ordinary labour market.

As regards its more specific questions on both mainstream and special education, the Committee refers to and reiterates the detailed questions asked in its previous conclusion (Conclusions 2007).

*Vocational training*

The Committee wishes to know whether the new anti-discrimination legislation covers secondary vocational education in all communities, and asks about the extent of mainstreaming in this area. It also reiterates its question on access to university education for persons with disabilities.

It refers to its previous conclusion for a description of the vocational guidance measures introduced in Walloon Region and Flemish Community, and takes note of the information on the German-speaking Community and the Brussels Region.

Moreover, the Committee notes from the report that as a result of the reorganisation of vocational guidance and training in Flanders (services co-ordinated by the Flemish Service for Employment and Vocational Training – VDAB – and co-operation with the new Flemish Agency for Persons with Disabilities), the number of persons with disabilities who have received job coaching-type training courses and have been able to follow various vocational integration paths has increased.

As the necessary information referred to above is lacking, it cannot be established that the situation in Belgium complies with Article 15§1 of the Revised Charter.

*Conclusion*

The Committee concludes that the situation in Belgium is not in conformity with Article 15§1 of the Revised Charter on the ground that, during the reference period, the anti-discrimination legislation covering education and training for persons with disabilities was inadequate.

*Paragraph 2 – Employment of persons with disabilities*

The Committee takes note of the information provided in Belgium's report as well as in the additional information submitted in May 2008.

The Committee points out that it deferred its previous conclusion (Conclusions 2007) pending receipt of essential information such as the total number of persons with disabilities, the number of persons with disabilities of employment age and the number of persons with disabilities employed (in the ordinary market or in sheltered employment). As the Committee has not received these figures, it cannot be established that the situation is in conformity with Article 15§2 of the Revised Charter. In this regard, the Committee recalls that where it is known that a certain category of persons is, or might be, discriminated against, it is the national authorities' duty to collect data to assess the extent of the problem (European Roma Rights Centre v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27). The gathering and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of rational policy (European Roma

Rights Centre v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23).

*Anti-discrimination legislation*

In its previous conclusion the Committee examined the Federal Act against Discrimination (25 February 2003) which prohibits direct and indirect discrimination in employment and training on grounds including disability, and requires employers to make reasonable adjustments to working conditions for persons with disabilities, unless this represents a disproportionate burden.

In this context, the Committee repeats that it needs to know, for all the regions in the country:

- how reasonable accommodation is implemented in practice, whether there is any case law on the subject and whether this has prompted an increase in the employment of persons with disabilities in the open labour market;
- whether compensation is available for material and non-material damage to persons who have been discriminated against, whether legal and non-legal remedies are available to them and whether there is any case law on the subject.

The Committee notes that in addition to the Flemish Community, where anti-discrimination legislation similar to that enacted at federal level has existed since 2002, legislation of the kind is also in force in the Walloon Region since 2004 and in the German Community since 2007.

*Measures to promote the employment of persons with disabilities*

The Committee refers to its previous conclusion (Conclusions 2007) for a description of the measures and various arrangements to promote the employment of persons with disabilities in the Flemish Community, the Walloon Region and the Brussels Region. It reiterates its request for information on the German-speaking Community.

It also takes note of the new measures listed below and asks for the next report to provide information on their practical impact in increasing the employment rate for persons with disabilities:

- at federal level, since April 2006, subject to certain conditions, employers recruiting poorly skilled young persons with disabilities under first job contracts have been receiving an employment allowance of 350 EUR which finances part of the net wage paid to the young person;
- also at federal level, young persons with disabilities (registered as such with a regional or community fund for the integration of persons with disabilities) who have a first job contract count as two units in the calculation of the quota imposed for the recruitment of young people, and their employers are also granted reductions in employers' social security contributions;
- in the Flemish Community, since April 2006, all measures involving the subsidising of wage costs have had to be requested from the Service for Employment and Vocational Training (VDAB). A new grant – the Flemish integration grant (VIP) – has been added to the other measures described in the previous conclusion. It is awarded for an indefinite duration and subsidises a fixed percentage (30%) of the wage;
- also in the Flemish Community since April 2006, to help employers meet their obligations in terms of reasonable accommodation the VDAB may grant to (i) employers, contributions to the cost of adjusting a work station (e.g. alterations to office furniture, to a works car, to machines, to sanitary facilities or to a switchboard); (ii) a person with disabilities, contributions to the cost of occupational tools and clothing (e.g. a special computer keyboard, a special office chair, a Braille reading ruler or a Dictaphone).

In its previous conclusion, the Committee noted that in the Flemish Community, since 2004, the quotas (2%) previously in force in the public administration had been replaced by a quantitative objective to ensure that 4.5% of persons with disabilities were employed by 2010. The Committee asked for information on the steps taken to achieve this objective. It notes that according to the report, in 2006, 161 diversity plans designed to integrate persons with disabilities were drawn up in Flanders and a pilot supported employment project aims to integrate 20 persons with disabilities working in sheltered employment into ordinary employment. It asks that the next report indicate the impact of these plans and this pilot project on the objective set for 2010. It also repeats that it wishes to know whether the objective of finding employment for 4.5% of persons with

disabilities by 2010 applies to both the public and the private sectors, and repeats its request for information on its achievement.

It also points out that Article 15§2 of the Charter requires persons with disabilities to be able to work in an ordinary working environment; sheltered employment facilities must therefore be reserved for those persons who, owing to their disabilities, cannot be integrated into the open labour market. These facilities should aim to help their beneficiaries to find jobs in the ordinary labour market.

The Committee notes from the report that in the Flemish Community the number of persons with disabilities working in sheltered employment facilities has decreased (from 14,468 in 2004 to 13,635 in the first quarter of 2006). However, as stated earlier, the Committee does not have all the necessary figures and this information is therefore insufficient.

The Committee asks for the next report to provide, for all regions, the proportion of persons with disabilities transferred from the sheltered employment sector to the open labour market.

*Conclusion*

The Committee concludes that the situation in Belgium is not in conformity with Article 15§2 of the Revised Charter on the ground that it has not been established that persons with disabilities are guaranteed 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 Belgium's report.

*Anti-discrimination legislation and integrated approach*

In its last conclusion (Conclusions 2007), the Committee observed that there was various legislation at regional/community level governing certain issues relating to housing, transport, telecommunications and cultural and leisure activities for persons with disabilities, but no general anti-discrimination law on disability explicitly covering these areas, in their entirety. It concluded that the situation was not in conformity with the Revised Charter.

According to an addendum to the report, an Anti-Discrimination Act was adopted outside the reference period, on 10 May 2007. The Committee will analyse the new legislation during the next supervision cycle. It asks the Government to provide all the necessary information on the application of this legislation and the remedies available to those who have suffered treatment in breach of the law. In the meantime, it abides by its conclusion of non-conformity.

The Flemish Community's policy on access is to establish a basic set of rules for intermediate bodies, and co-ordinate and harmonise their activities. The co-ordination policy is also concerned with offering uniform support, advice and encouragement to the Flemish Government, its different departments and its subordinate authorities. The Committee asks for information in the next report on the co-ordination and planning of policies for disabled persons in the French and German-speaking communities. The Committee also asks for more information on the implementation of the Flemish Community's policy.

*Consultation*

In the Flemish Community, the former fund for the integration of disabled persons was succeeded in April 2006 by a Flemish agency for persons with disabilities. Responsibility for supervising approved agencies and arrangements has been transferred to other bodies, in particular the "equal opportunities in Flanders" administrative unit. The aim of the latter is to ensure that everyone can enjoy full, autonomous and comfortable access to and use of all aspects of public provision. Disabled persons or their representatives are directly involved in the implementation of Flemish policy regarding persons with disabilities. The Committee asks what are the consultative bodies in the French and German-speaking communities.

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

In the Flemish Community, the Flemish agency grants persons with disabilities financial assistance to purchase individual items of equipment and a personal assistance budget. It also subsidises

various care facilities. The Committee asks what forms of material aid are available in the French and German-speaking Communities.

*Measures to overcome obstacles*

Technical aids

In the Flemish Community, the Flemish agency provides financial assistance for the purchase of technical aids concerned with communication and mobility, as well as other domains, to offer users greater autonomy in their everyday lives and facilitate their integration. A reference list lays down which products may be acquired, depending on whether they are additional or replacement items and/or the functional incapacities concerned – upper or lower limbs, back-spine-pelvis, hearing, sight or speech. Examples include, in the field of communication, TV magnifying glasses and, in that of mobility, vehicle adaptations. The Committee asks whether these aids are supplied free of charge to disabled persons or whether they must contribute to the cost.

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

The Committee asks, for all the country's regions/communities, 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. It also asks whether disabled persons are entitled to free support services, such as personal assistance or home help, 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

In the Flemish Community, there is a project to make the Internet more accessible to persons with disabilities. These measures form part of an “accessible web” project. Furthermore, since 5 May 2006, the Flemish parliament has recognised sign language as a separate language and acknowledged that “deaf people belong to a linguistic

and cultural minority group for whom Flemish sign language plays an identifying role. Flemish sign language is recognised by this decree".

The Committee asks what steps have been taken in the French and German-speaking Communities to overcome the barriers to communication faced by persons with disabilities, for example regarding the telecommunications system, and seeks information to this effect from public authorities – including information as to the use of new technologies such as public sector web sites – and the availability of Internet access. It also asks what the legal status of sign language is in these two communities.

Mobility and transport

In the absence of information in the report, the Committee asks how access to rail and air transport is secured in the Flemish Community. It also asks for information on the mobility and transport of disabled persons in the French and German-speaking communities. 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.

Housing

In the Flemish Community, the Flemish agency plans to introduce an accessibility label in the housing sector. The Committee asks for further information in the next report.

It again asks for information, for all the country's regions/communities, on the grants available to disabled persons for housing renovations/adaptations, the number of recipients, progress made towards improving the accessibility of accommodation and the application of regulations on access to public buildings for persons with disabilities. 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.

Culture and leisure

A new regulation came into force in Flanders on 1 January 2006 requiring approved leisure organisations to concentrate on assisted leisure activities and at the same time co-operate more closely with

the mainstream leisure sector to make ordinary leisure activities more accessible to disabled persons.

The Committee asks what steps have been taken to make sporting and cultural activities more available, in terms of access, charges, special programmes and so on, in the French and German-speaking communities.

*Conclusion*

The Committee concludes that Belgium 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 that 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 Belgium's report.

The Committee notes the entry into force on 1 June 2007, i.e. outside the reference period, of the Act of 15 September 2006 amending several provisions of the Act of 15 December 1980 on the entry, residence, establishment and removal of aliens. It asks for the next report to provide information on the amendments resulting from this law which may be relevant to Article 18 of the Charter.

*Foreign population and migratory movements*

The Committee notes from another source[1] that on 31 December 2005, 900,500 foreign nationals were entered in Belgium's population register, which is 8.6 % of its population. As in previous years, the foreign population was made up mostly of European Union citizens, then by Moroccans and Turks.

*Work permits*

The Committee points out that apart from nationals of State Parties to the Agreement on the European Economic Area, foreign nationals wishing to undertake gainful employment in Belgium require a work permit to work as employees or a self-employment permit (*carte professionnelle*) to be self-employed. For a detailed description of the legislation on the employment of foreign nationals and, in particular, the different types of permit that exist, it refers to its previous conclusion (Conclusions 2007).

The Committee notes that the transitional period for workers from the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia was still in force during the reference period. As a result, the nationals of these new EU member states still have

[1] Trends in International Migration, OECD, 2007 edition.

to obtain a work permit to work as employees. The same applied to nationals of Bulgaria and Romania, which have been EU members since 1 January 2007. In this connection, the Committee calls to mind that nationals of the aforementioned states or states which have negotiated an agreement with Belgium exempting their nationals from the relevant formalities are not subject to any restrictions with regard to self-employed activities (Conclusions 2007). The Committee asks for the next report to include an up-to-date list of states covered by this kind of agreement.

*Relevant statistics*

The report contains statistics on type-B and type-C work permits. Since type-C permits cover only foreign nationals coming to Belgium for purposes other than work (such as studies or asylum), the Committee will refer only to the information relating to type-B permits.

According to the figures given in the report, 6,311 first-time type-B work permits were issued to foreigners of all nationalities in 2005, and 30% of these were issued to Polish nationals. The same year, 2,639 type-B permits were issued or reissued to seasonal workers in the horticultural sector and 6,448 to highly skilled workers or persons appointed to management posts. The report states that of all the type-B permits issued in 2005 (nearly 12,000), over 50% were for highly skilled workers.

According to the report, 10,327 foreign nationals began a self-employed activity in Belgium in 2005.

To assess the degree of liberality in applying existing regulations, the Committee requires figures showing the refusal rates for granting work permits for first-time and renewal applications. The report, however, only gives figures for the number of work permits issued and makes no mention of rejected applications for permits by nationals of the States Parties which are not parties to the Agreement on the European Economic Area.

In its previous conclusion (Conclusions 2007) the Committee found that the situation was not in conformity because of a repeated lack of any information by which to assess the situation. In view of the foregoing the Committee considers that it has still not been shown

that the current rules on the right to engage in a gainful occupation in Belgium are applied in a spirit of liberality.

*Conclusion*

The Committee concludes that the situation in Belgium is not in conformity with Article 18§1 of the Charter because it has not been established that the existing regulations are applied in a spirit of liberality.

*Paragraph 2 – Simplifying formalities and reducing dues and taxes*

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

The Committee notes from the report that the situation which it has previously considered to be in conformity with the Charter with regard to the issuing and renewal of work permits and professional cards (for the self-employed) and the corresponding residence permits and to chancery dues and other charges remains largely unchanged. In this connection, it refers to its previous conclusions (Conclusions XV-2, XVII-2 and 2007).

Type-A work permits are issued to foreign nationals who, during a maximum period of ten years' legal and uninterrupted residence, have worked for at least four years under a type-B permit. According to the report, this period is reduced to three years for nationals of countries with which Belgium is linked by international conventions or agreements on the employment of workers. From the standpoint of the Charter, this applies to Croatia, "the former Yugoslav Republic of Macedonia", Turkey and the new European Union member states.

*Waiting times*

The Committee recalls that Article 18§2 implies that waiting times for requisite permits (residence and work) must be reasonable (Conclusions XVII-2, Portugal).

The Committee has previously noted that the waiting time for a type-B work permit, which in principle necessitates analysis of the employment market (except in the case of highly qualified persons, see the conclusion on Article 18§3), can take up to four months,

which it considered lengthy. It asked for statistics on the waiting times that applied in practice. In the absence of this information, the Committee repeats its request.

The Committee notes that there is an accelerated procedure for issuing type-B work permits to nationals of new EU member states when there is a shortage of manpower in the occupations concerned (see also the conclusion on Article 18§3). Under this simplified procedure the permit is issued within five days of the lodging of the application.

The report says that since the entry into force on 21 September 2006 of the Act of 1 May 2006 amending the legislation governing the establishment of foreign nationals in self-employment, decisions on the issuing, extension or renewal of professional cards are taken by an official appointed by the Minister for Small and Medium-Sized Businesses and forwarded to applicants via the relevant local authority or through diplomatic channels, depending on whether they are in Belgium or abroad. The report says that this method has been adopted to expedite the procedure. However, it is not clear how this has reduced the time taken to process applications for professional cards. The Committee previously noted that the time taken to obtain such cards could vary from a few days to a few months, depending on how long the applicants take to supply the necessary documentation in support of their requests. It asked for precise information on the average time taken to process applications for professional cards. In the absence of such data, the Committee reiterates its request. It also stresses that unless the next report provides the requisite information, it will have no proof that the time required to obtain a professional card is reasonable and therefore that the situation in Belgium complies with Article 18§2 of the Revised Charter.

*Conclusion*

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

*Paragraph 3 – Liberalising regulations*

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

*Access to the national labour market*

Paid employment

The Committee notes that before foreign workers can obtain work permits and thus access to the Belgian labour market their prospective employer must first obtain an employment authorisation, which is only issued if there are no national or Community candidates available. However, certain categories of employees such as particularly highly qualified persons, researchers and specialist technicians, are not subject to the availability criterion.

According to the report, employment authorisations are only issued for persons from countries with which Belgium has international agreements on the employment of workers. From the standpoint of the Charter, this applies to Croatia, "the former Yugoslav Republic of Macedonia", Turkey and the new European Union member states. The Committee asks whether nationals of States Parties with which Belgium has no international agreements on the employment of workers (i.e. Albania, Armenia, Azerbaijan, Georgia, Moldova and Ukraine) are excluded from the Belgian labour market. It also asks for clarification on these regulations.

The Committee also notes that in the case of nationals of new EU member states, access to the labour market has been made easier for certain occupations where there is a shortage of manpower. The granting of permits is automatic and faster – a maximum of five days – for occupations on a list of critical activities drawn up by the regions.

Self-employment

Permits to work in a self-employed capacity – professional cards – are only issued if this is in Belgium's economic interest, a condition that the Committee has criticised for its general nature, which could significantly restrict access to the Belgian labour market (Conclusions XV-2, XVII-2, 2007). In the absence of new information on this subject in the report, the Committee asks once again whether there are plans to liberalise this regulation. It also wishes to know which authority is responsible to decide whether there is an economic interest for the country to issue permits to work.

*Exercise of the right of employment and consequences of job loss*

Type-B permits are still only valid for the employer who requested the employment authorisation and the area of activity for which it was issued. Nor can the period of validity of residence permits issued to foreign workers on the basis of type-B permits be extended beyond their initial expiry date to enable those concerned to look for new employment. In the Walloon Region, residence permits are valid for up to a month after the work permit expires. Since loss of employment does not result in withdrawal of their residence permit, foreign workers at least therefore have a month to look for fresh work. However, bearing in mind the restrictions and requirements that are applicable in practice, in particular the need for the new employer to secure an employment authorisation, they are unlikely to be able to benefit from such a period.

In the absence of new information on this subject in the report, the Committee once again asks whether there are plans to liberalise this regulation. In particular, it wishes to know whether appeals against dismissals of foreign workers are possible and whether residence permits can exceptionally be extended pending a court decision on that issue.

*Conclusion*

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

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

The Committee notes from the report that there have been no changes to the situation, which it has previously considered to be in conformity with the Charter.

It asks for the next report to provide a complete list of practical circumstances in which Belgian citizens may be prevented from leaving the country, and their legal basis.

*Conclusion*

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

**Article 20 – The 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 Belgium's report.

*Equal Rights*

The Law of 7 May 1999 on Equal Treatment between Men and Women covers access to employment, conditions of employment, promotion, access to complementary social security schemes. It prohibits both direct and indirect discrimination on grounds of sex. Royal Decree of 8 February 1979 makes certain exceptions to the prohibition of discrimination for genuine occupational requirements.

As training, guidance etc are outside the competence of the federal government they are outside the scope of the above mentioned legislation.

There is no discrimination on grounds of gender in matter of social security.

The Committee notes the information provided in the report on the special provisions relating to maternity, it will examine these during its next examination of Article 8 of the Revised Charter.

Individuals who believe that they have been discriminated against on grounds of sex may take their case before the courts; legal assistance is available from the Institute for Equality between Men and Women. Discrimination cases may also be taken by employee organisations.

All discrimination clauses in individual employment contracts or in collective agreements are null and void.

The burden of proof in discrimination cases is shared between the parties.

Individuals are protected against reprisals in particular retaliatory dismissal.

In cases of discriminatory dismissal an individual may request reinstatement, however should the employer refuse he/she must pay

an indemnity equal to six months remuneration or an amount equal to the damage actually suffered.

According to the report there is no discrimination on grounds of sex in social security.

The Institute for Equality between Men and Women is an independent federal body which in addition to providing legal assistance is responsible for promoting gender mainstreaming, research and proposing measures for the Government to take in the field of gender equality.

Legislation makes provision for positive action measures.

The Committee notes from another source[1] that the main instrument to enforce the principle of equal pay is Collective Agreement No. 25 on equal pay for male and female employees, adopted on 15 October 1975 and made generally binding by a Royal Decree of 9 December 1975. The social partners amended this Collective agreement on 19 December 2001 with the purpose of raising awareness on the necessity of adopting gender neutral systems of job evaluation. The Committee asks to be kept informed on how the social partners are fulfilling their obligation of making sure that the principle of equal pay is enforced in practice. It also wishes to know whether the available instruments on equal pay permit, in equal pay litigation cases, to make comparisons of pay and jobs outside the company directly concerned.

*Position of women in employment and training*

In 2004, 49.4% of the active population were women.

In 2006, the Ministry for Employment and Social Affairs and the institute for Equality between Men and Women collaborated to draft the first report on the gender pay gap this was published in 2007. The report aims to assist in identifying the extent of the problem, the reasons for the continuing pay gap as well as evaluating measures taken to reduce it. The report found that the pay gap was on average

[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.

15%. The Ministry and the Institute will continue to draw up a report annually. The Committee asks to be kept informed of all developments in the situation.

According to the report the reasons for the gender pay gap are multiple; and range from stereotyping in educational choices, segregation of the employment market to difficulties in reconciling private and professional life.

The Institute for Equality between Men and Women introduced a project "EVA" between 2000-2006 the aim of which was to devise a sexually neutral job classification system and therefore to ensure equal pay for work of equal value. A manual on job classifications made available to all social partners was introduced following the project.

The Committee takes notes of the information in the report on the measures taken to promote equality between men and women in the Brussels Region. It asks to receive information for the other regions.

*Conclusion*

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

**Article 25 – The 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 Belgium's report.

The Committee notes the entry into force on 1 April 2007, i.e. outside the reference period, of the Company Closure Act of 26 June 2002, amending the rules protecting employees' claims in the event of the insolvency of their employer. This Act and the amendments in question will be dealt with in the next report.

The Committee notes that there were no changes in the situation that it previously considered to be in conformity with the Revised Charter. In this connection, it reiterates that claims are protected in the event of the insolvency of employers through a mechanism combining preferential treatment and a guarantee system (the Company Closure Fund). General preferential treatment of workers' claims applies to employers' movable assets and covers all claims arising from the employment relationship including salaries and claims in respect of paid leave. The protection afforded by the Company Closure Fund covers payments, indemnities and advantages due in accordance with collective agreements or the law. In this connection, the Committee notes that under an Act of 28 June 1966, employees of companies that close down are paid a closure allowance. According to the report, since the introduction of a new Act of 3 July 2005, this allowance, which was initially granted to workers in companies with an average of 20 employees, has now been extended to workers in companies with 10 to 19 employees on average.

The Committee would point out again that there is a ceiling on Closure Fund payments of € 22,310.42 per employee and per closure.

In view of the foregoing information, the Committee asks whether sums owed for absences other than paid leave are covered by the Closure Fund. It asks what period is covered for each type of protected claim and if the aforementioned ceiling on payments is regularly adjusted. It also asks exactly how the Closure Fund is financed and 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.

In its previous conclusion (Conclusions 2007), the Committee noted that workers in companies covered by agreements negotiated by a number of joint committees, temporary workers, and employees from certified companies providing neighbourhood services were excluded from Closure Fund protection, that they were however offered equivalent advantages at sectoral level.

In this connection, the Committee points out that under Article 25 of the Revised Charter, States have a margin of discretion as to what form protection of employees' claims may take provided that it is effective. It is therefore quite conceivable that certain categories of workers' claims will be protected by means of a guarantee system whereas others will be covered by other systems or equivalent advantages. To assess how effective these other protection systems are, the Committee does, however, require information on how they operate.

Bearing in mind all the foregoing, the Committee asks how the claims of workers in companies covered by agreements negotiated by a number of joint committees, temporary workers, and employees from certified companies providing neighbourhood services are protected.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 25 of the Revised Charter.

# Chapter 6 – Conclusions concerning Articles 1, 18, 20, 24 and 25 of the Revised Charter in respect of Bulgaria

## 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 Bulgaria on 7 June 2000. The time limit for submitting the 6th report on the application of the Revised Charter to the Council of Europe was 31 October 2007) and Bulgaria 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),
– right of workers to the protection of claims in the event of insolvency of the employer (Article 25).

Bulgaria has accepted these articles with the exception of articles 9, 10, 15, 18§1, 18§2, and 18§3.

The applicable reference periods were:

– 1 January 2003-31 December 2006 for article 18§4;
– 1 January 2005-31 December 2006 for articles 1, 20, 24 and 25.

The present chapter on Bulgaria concerns 8 situations and contains:

– 3 conclusions of conformity: 1§1, 1§3 and 18§4;
– 2 conclusions of non-conformity: 1§4 and 24.

In respect of the 3 other situations concerning Articles 1§2, 20 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 Bulgarian 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 this 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 Bulgaria's report.

*Employment situation*

The Committee notes from Eurostat that growth in Bulgaria was fairly buoyant during the reference period (6.2% in 2006, whilst it was 5% in 2004).

The employment rate continued to rise during the reference period, from 54.2% in 2004 to 58.6% in 2006. Women also benefited from this growth (54.6% in 2006). The Committee notes, however, that these employment rates are still lower than the EU-15 average (66.2% for the population at large and 58.7% for women in 2006).

Unemployment, youth unemployment (persons aged 15-24 years) and female unemployment likewise continued to fall during the reference period (from 12% in 2004 to 9% in 2006 in the case of total unemployment, from 25.8% in 2004 to 19.5% in 2006 in the case of youth and from 11.5% in 2004 to 9.3% in 2006 in the case of women). The Committee notes that unemployment rate and female unemployment rate are slightly higher than the EU-15 average (7,7% and 8,5% respectively in 2006), while youth unemployment is much higher (15,7% in 2006).

It further notes that long-term unemployment expressed as a percentage of total unemployment has likewise continued to decline, from 59.5% in 2004 to 54.7% in 2006, but is still higher than the EU-15 average (42.1% in 2006).

In reply to the Committee, the report states that the unemployment rate among people with disabilities declined during the reference period, from 14% in 2005 to 12.2% in 2006.

*Employment policy*

The report states that the main goals set by the 2006 National Employment Action Plan were to:

– increase the employment rate to 58%;

– reduce unemployment to under 11%;
– reduce the share of unemployed young people by 10%;
– create subsidised employment for 109,413 persons and ensure that 40,790 people are provided with training.

In reply to the Committee, the report states, with the aid of statistics, that thanks to the various active measures taken, a steady increase in employment and a reduction in all the unemployment indicators for all sections of the population was once again observed.

In the case of the unemployed, measures have been introduced to help young people and adults alike to find jobs (individual follow-up) and to enable them to access various training programmes. Job creation schemes also feature among the measures taken to activate the unemployed. In reply to the Committee, the report states that in total, 137,820 jobs were created in 2006 (as against 162,900 in 2005), while 45,742 people received training (as against 39,097 in 2005). The Committee wishes to know the activation rate of unemployed people.

Particular attention was given to youth employment, the long-term unemployed and people with disabilities.

In the case of young people, the measures taken are aimed mainly at reforming the education system and facilitating the transition from education to employment. Other measures are designed to enable them to receive training, including with a view to developing enterprise or knowledge and skills in the field of new information and communication technologies, or to find employment in local and central government (*Career Start* programme).

The launch of the programme *From Social Assistance towards Provision of Employment* is designed to create jobs for the unemployed, including notably long-term unemployed persons receiving social assistance. According to the report, 82,550 jobs were created under this programme in 2006, 45.8% of which were filled by women (92,510 jobs created in 2005).

As regards people with disabilities, the introduction of a national employment programme helped to create 16,793 jobs in 2006, 65.2% of which were filled by women (18,282 jobs created in 2005). Another programme designed to promote subsidised employment

and appropriate working conditions for unemployed people with disabilities has also been launched.

Other specific initiatives are targeted at women in an effort to increase their participation in the labour market (training, enterprise development, creation of subsidised employment), workers aged between 55 and 64 (measures to encourage employers to recruit or retain them, training) and members of minorities, including the Roma (various schemes including training, job creation and enterprise development). The Committee wishes to know what measures have been taken specifically to help immigrants.

It also repeats its request for information on the average time before an unemployed person is offered participation in an active measure.

The Committee notes from Eurostat that total expenditure on employment policy (active and passive measures combined) declined from 0.8% of GDP in 2004 to 0.6 of GDP in 2006 (the EU-15 average was 2% in 2006). Spending on active measures represented 0.4% of GDP in 2006 (0.5% in 2004), whereas the EU-15 average was 0.5% in 2006. The Committee notes that total expenditure on employment policy is significantly lower than the EU-15 average (2% in 2006). It wishes to know whether it is planned to increase this amount, particularly in view of the problem of long-term unemployment.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Bulgaria 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 Bulgaria'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 (Conclusions 2006).

For states such as Bulgaria that have accepted Article 20 of the Revised Charter, the right to equal treatment and opportunities without discrimination based on sex is considered under this provision.

Section 2 of the Employment Promotion Act prohibits direct and indirect discrimination in employment on grounds of nationality, origin, gender, sexual orientation, race, colour, age, political and religious convictions, affiliation to trade unions or other non-governmental organisations, marital status, social and financial condition and physical or mental disability. The same applies to Article 8§3 of the Labour Code. Section 4§1 of the Protection against Discrimination Act of 30 September 2003, which also applies to employment relations, prohibits all direct and indirect discrimination based on sex, race, birth, ethnic origin, human genome, nationality, origin, religion or faith, education, beliefs, political affiliation, personal or public status, disability, age, sexual orientation, marital status, property or any other grounds specified in law or in international treaties to which Bulgaria is a party.

The Committee notes that Section 7 of the Protection against Discrimination Act permits certain exceptions to the general ban on discrimination. In particular, difference of treatment is possible when, for reasons connected with the nature of the activity or the conditions in which it is exercised, certain characteristics of the individual concerned constitute an essential and critical occupational requirement, that the purpose is legitimate and that the requirement is not out of proportion to what is necessary to achieve that purpose. It also notes that this section authorises positive forms of intervention. The Committee reiterates that such exceptions to the general ban on discrimination are acceptable (Conclusions 2006).

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 Parties 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.

In Bulgaria, particularly under Section 7§4 of the Public Service Act, which prohibits discrimination on ground of nationality, nationals of other States Parties may be employed in the public service, local authorities and so on in posts that are unrelated to national security and do not involve the exercise of public authority for the protection of public order or security. Under Section 33 of the legislation governing foreign nationals in Bulgaria, their conditions of employment depend on the residence and work permits issued to them. In particular, foreign nationals who hold permanent residence permits can seek work according to the same conditions and procedures as apply to Bulgarian citizens.

However, Section 7§1 of the Public Service Act prevents foreign nationals from obtaining the status of civil servant.

The Committee also notes that Section 7 of the Protection against Discrimination Act authorises difference of treatment on grounds on nationality if this is provided for in legislation or an international treaty to which Bulgaria is a party. It considers that this section does not appear to be subject to adequate legal limits and thus authorises any discrimination based on nationality so long as it is provided for in legislation or an international treaty to which Bulgaria is a party. It therefore asks whether the section is subject to and limited by other legal provisions than the legislation in question and whether there are any legislation or international treaties that, according to Bulgaria, authorise difference of treatment on grounds on nationality in the areas which are covered by the Revised Charter.

In the absence of any reply in the report, the Committee again asks how the notion of discrimination on grounds of age is interpreted.

The Protection against Discrimination Act of 30 September 2003 established an independent commission to oversee the application of the anti-discrimination legislation. It can take up individual cases and receive requests from individuals and impose compulsory administrative measures and fines. The number of cases dealt with by the Commission has been rising since its creation. In 2006, it received 389 complaints, 220 of which were considered to be admissible. The Committee asks for details of the main problems of

discrimination highlighted by the Commission, the measures it has recommended to deal with them or the penalties it has imposed and the response to its decisions.

The Committee notes that the Integration of Disabled Persons Act of 17 September 2004 has been amended and extended by the Act of 14 September 2006. The new legislation introduces specific measures to encourage the employment of persons with disabilities. The Committee asks for the up-to-date text of the legislation in English or French in the next report and any information that will enable it to assess its application, so that it can then consider the situation of persons with disabilities in its next examination of Article 1§2.

The Committee earlier found that remedies for breaches of the non-discrimination legislation were not applicable to foreign nationals working in Bulgaria for foreign employers, even ones established in Bulgaria, which meant that they were excluded from Bulgarian courts' jurisdiction. The Committee ruled that this was incompatible with Article 1§2 of the Revised Charter (Conclusions 2004). The Labour Code has since been amended. Under Article 361, disputes between foreign employees and foreign employers or joint ventures established in Bulgaria are now heard in the court of the employer's domicile, unless the parties agree to a different procedure. However, Article 17§2 of the Code of Private International Law specifies that such agreements on the choice of court are only valid if reached after the start of the dispute. The Committee concludes that these new provisions are compatible with the Revised Charter.

Under Article 1§2 of the Revised Charter, compensation for discrimination must be effective and proportionate and act as a deterrent. The Committee 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 previously found that in Bulgaria persons who suffered discriminatory dismissal were eligible for reinstatement in their previous post (Article 345 of the Labour Code) and were entitled to damages up to a maximum of six months wages (Article 225 of the Labour Code). For the aforementioned reasons, it ruled that this ceiling was not compatible with the Revised Charter (Bulgaria,

Conclusions 2004 and 2006). Although Article 225 of the Labour Code is still valid, the report says that there is no statutory limit to the amount of compensation for which a victim of discrimination may apply to the courts. It bases this argument on Section 71§1 of the Protection against Discrimination Act of 30 September 2003. Under this section, persons suffering a breach of their right to equal treatment may apply to a district court to establish that a violation has occurred and secure an order requiring the perpetrator to cease the violation, restore the *status quo ante*, abstain from further violations and pay compensation for damage suffered. It appears that this provision takes precedence over Article 225 of the Labour Code as far as discrimination is concerned and that there is no upper limit to the compensation payable in such cases. However, the Committee notes that the Bulgarian delegate had indicated to the Governmental Committee that there was as yet no case-law to confirm this(see Report of the Governmental Committee on Conclusions 2006, T-SG(2007)11, p.11). The Committee therefore asks for clarification in the next report on the relationship between the Labour Code and the Protection against Discrimination Act and evidence, particularly based on legal decisions, to show that there is no predetermined upper limit to the compensation payable in cases of discrimination.

2. Prohibition of forced labour

The Committee previously noted that, according to the relevant report, the rules governing railway management staff contained coercive provisions that could be incompatible with the ban on forced labour (Conclusions 2004). It appears that these are still in force and have not been amended since. The Rail Transport Act was amended in 2006 but the report has nothing to say on whether, and if so how, it has changed the relevant rules governing railway management staff. The Committee therefore asks for precise information in the next report on the situation regarding these various rules.

*Prison work*

The Committee notes that the Execution of Sentences Act entitles prisoners to work, subject to certain conditions. They receive at least 30% of the remuneration paid for their work. Working conditions are governed by employment legislation, particularly with regard to the length of the working day and rest periods, which must be at least 12

continuous hours and 38 continuous hours at least once a week. The work to be carried out is determined by the prison service, having regard to existing work opportunities, and prisoners' age, sex, state of health, qualifications and interests. Prisoners mainly work in enterprises, farms and workshops within the precincts of prisons and youth custody centres. They may also work in commercial companies or for other organisations, subject to the approval of and conditions laid down by the justice ministry.

To complete this information, the Committee asks whether prisoners can be required to work, without their agreement, for a firm, a private or public body or the state, and if so what types of work they can be required to undertake.

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*

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 Bulgaria’s report.

According to the report, the number of vacancies notified to the employment services fell from 323,791 in 2005 to 279,603 in 2006.

At the same time, the placement rate in 2006 was 92% (with 258,411 unemployed people finding jobs thanks to the public employment services), which was a considerable increase compared to the figure in 2004 (76%).

In reply to the Committee, the report states that the number of people who have been unemployed for a year or more has continued to decline each year (decreasing by 14.4% between 2005 and 2006). The Committee asks for the next report to give further details, such as the number of jobseekers who have contacted or visited employers.

It also asks for information on the total number of staff and respective qualifications in the public employment services.

According to the Law on promotion of employment of 27 May 2003, placement services may be operated by physical and legal persons registered in Bulgaria. These services are operated free of charge according to the amendments on the aforementioned Law of 28 February 2006.

The Committee previously (Conclusions 2006, Conclusions 2004) asked what the conditions are for issuing permits and who supervises the performance of private employment services. It takes note of the information provided by the report on this matter.

According to the report, a campaign to promote the supervision of placement activities by private agencies was launched in 2005. Its aims now include promoting the implementation of the new amendments made to the legislation in 2006 providing for penalties in the event of infringements. These amendments were also intended to bring the legislation governing employment services into line with ILO standards and the situation in European Union member states. Other additions to the legislation included an extension of the validity of the licence that employment services must hold to carry out their activities, a relaxation of administrative requirements and the free provision of services.

The Committee asks what percentage of the market the public employment services represent, that is placements made by the

public employment services as a percentage of the total number of persons recruited on to the labour market.

Lastly, it notes that management and labour take part in the management of the employment office at national level, through a governing board which is made up of representatives of employers' and employees' organisations. The result is that they are actively involved in devising and implementing national employment strategy. This "tripartite" co-operation is also the norm at regional and local level.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Bulgaria 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 Bulgaria's report.

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 and training), which contain more specific rights to vocational guidance and training. However, Bulgaria has not accepted these provisions, 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 training.

*Vocational guidance*

In its previous conclusion (Conclusions 2007), the Committee referred to a reform of the vocational guidance system that aimed to turn vocational information centres (VICs), counselling and vocational training centres (CVTCs) and job clubs into specialist employment agencies under the employment office directorates (EBDs). In the absence of information in the report, the Committee repeats its request for information on the outcome of this reform.

According to the report, 104,873 unemployed persons received individual vocational counselling in 2005. In 2006, the figure was 103,106. The number of unemployed persons who benefited from collective vocational guidance services was 58,720 in 2005 and 58,300 in 2006.

Under the law of 3 March 2006 amending the Promotion of Employment Act, vocational guidance is provided free of charge.

*Continuing vocational training*

One of the goals of the National Employment Action Plan for the period 2005-2006 is to develop continuing training for adults. Under the Promotion of Employment Act, the employment agency organises and finances training for the unemployed according to the needs of the labour market.

Under the Vocational Education and Training Act, the National Agency for Vocational Education and Training issues licences to the centres providing training. To date, 490 licences have been awarded nationwide. In 2005, 27,859 unemployed persons started vocational training and 36,344 graduated with a vocational qualification. After training, 26,832 unemployed persons found a job. In 2006, 31,153 persons were enrolled in vocational training courses, i.e. 11.8% more than in 2005. The Committee wishes to know how many training placements or courses are available and whether the supply meets the demand for training.

In reply to the Committee's question about the measures taken to remedy the low rate of public participation in continuing training, the report states that a national strategy to promote continuing training was adopted for the period 2005-2010. The aim of this strategy is to set priorities for developing continuing training and to designate institutions responsible for implementing them. The National Vocational Development Centre provides training for officials from various ministries as well as courses designed to upgrade skills in occupations for which there is particularly high demand in the labour market. The Committee asks that the next report provide information on the results of this strategy.

*Guidance, education and vocational training for persons with disabilities*

According to the report, the Agency for Persons with Disabilities (APD) works with non-governmental organisations to provide vocational guidance and training for people with disabilities. In 2005, the APD financed 16 training schemes and in 2006, 18 vocational training schemes for people with disabilities.

Implementation of the national programme for the employment and vocational training of people with disabilities continued in 2005 and 2006. The main aim of this programme is to make the individuals concerned more employable and to encourage employers to hire them. According to the report, the number of people benefiting from the measures was 15% higher in 2006 than in 2005.

This national programme provides funding for the professional integration of people with disabilities and seeks to improve facilities at workplaces. In 2006, the funding amounted to 3.7 million Bulgarian lev (BGN) (€ 1.889 million) compared with 0.7 million BGN (€ 357 000) in 2005.

In its previous conclusion, the Committee observed that nationals of other States Parties lawfully resident or working regularly in Bulgaria enjoyed equal treatment regarding all the aspects considered under Article 1§4, as long as they held a permanent residence permit. The Committee asked what were the conditions governing the issuing of such permits. The report states that, under Article 25 of the Foreigners Act, permanent residence may be granted to foreigners

provided*, inter alia*, they have resided lawfully without interruption in the country for a period of five years.

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 there is a length of residence requirement for foreigners wishing to receive vocational guidance, training or rehabilitation and that this situation constitutes unequal treatment in breach of the Revised Charter.

*Conclusion*

The Committee concludes that the situation in Bulgaria is not in conformity with Article 1§4 of the Revised Charter on the ground that nationals of other States Parties lawfully resident or working regularly in Bulgaria are subject to a length of residence requirement for entitlement to vocational guidance, training or rehabilitation.

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

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

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

The Committee points out that Article 48§3 of the Constitution guarantees Bulgarian citizens the right to choose their employment or occupation freely. They are entitled – but not required – to use "job brokers" when taking up jobs abroad.

In its previous conclusions, the Committee set out a list of circumstances in which nationals could be prevented from leaving the country and asked for further information on the exact content and scope of these restrictions. In this connection, the report begins by specifying that a new Code of Criminal Procedure came into force on 29 April 2006. The Committee notes, however, that there has been no change to the article of the former Code entitling prosecutors to prohibit a person accused of a crime carrying a prison sentence from leaving the country.

The report also states that the restrictions on leaving the country described in section 75 of the Bulgarian Identity Documents Act are binding. As a result, persons subject to a foreign travel ban issued under the Code of Criminal Procedure or the Tax Procedure Code (in particular for tax debts), persons sentenced to imprisonment having been found guilty of a criminal offence, persons who have failed to pay allowance during a previous period of residence abroad and persons who would pose a threat to national security if allowed to leave the country are automatically prohibited from leaving the country or will not be issued a passport.

According to the report, the relevant authorities have discretionary powers where all other grounds for restrictions are concerned.

The Committee notes that, for whatever reason a restriction is imposed, the reasons for the decision must be documented and the decision is open to appeal (through an administrative complaint or another type of remedy).

Lastly, the report states that a new section 76 (a) has been added to the Bulgarian Identity Documents Act, under which children who,

during a previous stay abroad, have been the victims of treatment prohibited by the Child Protection Act, including forced prostitution, may be prevented from leaving the country for a period of up to two years.

The Committee considers that the restrictions on the right to leave the country provided for by Bulgarian legislation satisfy the requirements of Article G of the Revised Charter. It asks, nonetheless, for the next report to give details of how the restriction for reasons of national security is applied in practice.

*Conclusion*

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

**Article 20 – The 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 Bulgaria's report.

*Equal rights*

The Committee refers to its previous conclusion for an overview of the legal framework on the right to equal treatment between men and women (Conclusions 2006).

A number of amendments were made to the Discrimination Protection Act in 2006, including the introduction of fair selection criteria and safeguards for equal opportunities for women and men employed in the administration.

The report indicates that a draft Act on Equal Opportunities for Men and Women was submitted for debate to the National Assembly in 2006, but was subsequently withdrawn to introduce some amendments. The Committee asks if there has been any progress or developments concerning this new draft law.

As regards the independent Commission for the Protection against Discrimination, there has been a progressive increase of cases lodged before this body. In 2006, a total of 389 complaints were registered (on all grounds of discrimination). The report provides some examples of cases concerning sex discrimination, but indicates that complaints on this ground are a minority.

The Committee recalls that under Article 20 compensation for victims of discrimination should not be subject to an upper limit as this can prevent it from being adequate and proportionate to the damage suffered by the victim. According to the report, Bulgarian legislation sets no upper limits on the amount of compensation for damages linked to a discriminatory dismissal (Article 71 of the Protection against Discrimination Act). However, the Committee had previously noted that persons who suffered discriminatory dismissal were eligible for reinstatement and entitled to damages up to a maximum of six months wages (Conclusions 2006, Article 1§2, Bulgaria). The Committee refers to its observations and questions under Article

1§2, and requests a clarification on this issue with a view to assessing the situation on this part of Article 20.

As regards equal pay, the Committee notes from another source[1] that it is currently regulated in the Labour Code (Article 243) and in the Law on Protection against discrimination (Article 14). The definition of equal pay used in these texts refers to 'same or equivalent work'. A broad interpretation of this definition, in the sense of 'work of comparable value', would be necessary to ensure that women who undertake different work than men but work which is of equal value are remunerated equally (based on objective job appraisals using criteria such as responsibility, skill, effort and working conditions). The Committee therefore asks how judicial bodies interpret and apply the principle of equal pay in claims related to unequal pay. It also reiterates its request for information on whether pay comparisons beyond individual firms are possible.

The Committee notes from the above source that the Law on Protection against Discrimination contains an obligation for trade unions to promote the principle of equal pay, but that such obligations are not yet being implemented in Bulgaria. It appears that collective bargaining and collective agreements do not currently play a role in promoting the principle of equal pay. 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 takes note of the amendments to the Labour Code on leave due to pregnancy, childbirth and adoption, as well as on protection against dismissal of pregnant employees, and recalls that this information will be taken into account next time it examines Article 8.

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[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

The report lists the occupations and activities which are exclusively reserved for one sex pursuant to Ordinance N°4 of 30 March 2004, as well as Ordinance N°14 of 18 October 2005. The Committee notes that in the latter, the following activities are reserved for men in regular military service: (i) conducting a police search or raid, (ii) managing and servicing underwater boats, and (iii) presenting arms by the honorary guard and paying honours by units of the National Guard Forces.

*Position of women in employment and training*

The Committee notes from Eurostat[1] that employment rates (women and men aged 15-64) in 2006 were: 54.6% of women, and 62.8% of men. The female employment rate in Bulgaria has increased at a steady pace since 2000, and in 2006 was just under the average for EU-27 countries, which stood at 57.2%.

The female unemployment rate (women aged 15 and over) in 2006 was 9.3%, which is a significant improvement from the 18.9% rate in 2001.

The share of women employees working part-time was 2.3% in 2007 while the corresponding figure for men was 1.5%.

The share of women employees with temporary contracts was 6.1% in 2006 while the rate for men was 6.3%.

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 14% in 2006, one point under the average for EU-27 countries. The Committee asks what is the estimated percentage of the pay gap which cannot be attributed to known factors, such as the employment of women in sectors where remuneration is lower. It also reiterates its wish to receive information on concrete measures taken to reduce the wage gap, namely via collective agreements (see question above).

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

*Measures to promote equal opportunities*

The report mentions the launching in 2007 of the National Programme in Support of Motherhood, which aims to promote the professional development of mothers. It also mentions the project on Family Centres for Children, aimed at providing employment for jobless women in the raising of children of working parents.

As regards mainstreaming, the report indicates there are specially trained civil servants at the central, regional and local administrations (the so-called focal points) responsible for implementing measures and policies on gender equality. 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 defers its conclusion.

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

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

*Scope*

In its previous conclusions (Conclusions 2007), the Committee asked for confirmation whether workers on fixed term contracts have the same rights to protection against dismissal and whether there is a minimum period of employment required before the guarantees in the Labour Code concerning dismissal apply. It notes from the report that according to Section 68 para. 2 of the Labour Code as amended in 2006, employees working under a fixed term contract shall have the same rights and obligations as those working under employment contracts concluded for an indefinite period.

The Committee further notes from Section 70 of the Labour Code that the employer may make an employment contract subject to a probationary period of six months and that he/she may terminate the contract without notice prior to the expiration of the trial period. The Committee asks whether in the course of the six months probationary period the employee is excluded from any protection against unfair dismissal.

*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 Conclusions 2007).

In reply to the Committee's request for further information on the situation as regards termination of the employment relationship on the grounds that an employee has to serve a prison sentence, the report states that termination in these cases is at the discretion of the employer and that he may not dismiss the employee if he deems that the term of the sentence is short. However, it still appears from Section 330 of the Labour Code that the employer may immediately dismiss an employee sentenced to prison irrespective of the length of the sentence and irrespective of whether the sentence is based on grounds related to the employment and the Committee asks the next report for confirmation that this is actually the case. The Committee

recalls in this context its case law that a prison sentence delivered by a court, can be a valid ground for termination if such sentence is delivered for employment-related offences. This is not the case with prison sentences for offences unrelated with the person's employment, which cannot be considered valid reasons unless the length of the custodial sentence prevents the person from carrying out their work (Conclusions 2005, Estonia).

The Committee had further noted in its previous conclusion that an employee may be dismissed on the grounds he/she has reached the retirement age (Section 328§10 of the Labour Code). It observes that termination in this event is subject to the employee having acquired a right to pension pursuant to Section 68 of the Social Security Code, i.e. the employee must have reached a certain age and in addition have worked for the period required for acquisition of the pension entitlement. The Committee understands that even though the Labour Code permits termination of an employment contract when these conditions are fulfilled cumulatively, termination is not compulsory but it is however possible, subject to 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 asks the next report to provide information on whether and how the legal framework complies with this approach.

As regards termination of an employment contract for economic reasons, the Committee notes from the report that the competent courts may examine whether the facts invoked by the employer as creating economic reasons for the dismissal are accurate.

In reply to the Committee's question, the report further confirms that in any event an employer's written order terminating an employment contract shall, *inter alia*, contain the legal grounds for such a termination.

*Prohibited dismissals*

In reply to the Committee's request for information on the protection of workers who are temporarily absent from work due to illness or disability, the report states that termination of a contract on the ground of disability is not related to the duration of the incapacity. The Committee however notes from Section 325 of the Labour Code that dismissal of an employee is only permitted on the grounds that he is suffering from a (permanent) disability which prevents him/her from carrying out the job and where the employer can not offer alternative suitable employment. According to Section 314 of the Labour Code, an employee who after an illness or occupational accident is not able to continue with his former job, but who is able to perform another suitable job or the same job under alleviated conditions, shall be reassigned to another job or the same job with alleviated conditions upon prescription of the health authorities. Furthermore, Section 320 of the Labour Code stipulates that an employee who has lost at least 50 % of his working capacity and is reassigned to a post where he/she has a lower remuneration than in the previous one, shall be entitled to cash compensation for the difference. Furthermore, pursuant to Section 162 of the Labour Code, an employee is entitled to leave in case of temporary disability for the period of which he/she is entitled to cash compensation. The Committee understands that according to the above-mentioned provisions, there is no possibility to dismiss an employee on the ground of temporary disability, however it asks the next report to confirm that this is actually the case.

As regards reprisal dismissals, the report points out that any dismissal of an employee that is not based on grounds permitted under the Labour Code shall be unlawful and the Committee reiterates its question whether there is any case law of the courts clearly demonstrating that reprisal dismissals are unlawful.

*Remedies and sanctions*

The Committee previously found that the situation was not in conformity with Article 24 of the Revised Charter on the grounds that the compensatory payment for unlawful termination of employment is subject to a maximum of six months' wages even though judicial proceedings in unfair dismissal cases lasted on average two years. The Committee notes from the report that following amendments

made to the Civil Procedure Code in 2001, the law provides for accelerated procedures in relation with disputes on the termination of employment relationships and thus proceedings may be concluded in even less than six months. However, it appears from the comments made by the Confederation of Independent Trade Unions in Bulgaria in this respect that in the event such a dispute is complex, the competent court would treat it under the general rules of procedure which can still take up to two or three years. The Committee therefore holds that the situation has not changed and reiterates its conclusion of non-conformity on this ground.

*Conclusion*

The Committee concludes that the situation in Bulgaria is not in conformity with Article 24 of the Revised Charter on the ground that the compensation for unlawful termination of employment is subject to a maximum of six months' wages.

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

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

In its last conclusion, the Committee concluded that the situation was not in conformity with Article 25 of the Revised Charter because legislation did not provide effective protection of employees' claims equivalent to a guarantee.

The Committee notes that new legislation came into force during the reference period to protect employees' claims in the event of their employer's insolvency. The new act establishes a special guarantee fund and lays down the rules that govern its operations. The Committee notes that the guarantee fund is now the main source for the settlement of employees' claims and that the latter only have to turn to the privilege system under commercial law when the protection offered by the fund is insufficient to cover all their claims.

The Committee notes that under the Commerce Act undertakings are deemed to be insolvent when they cannot meet their financial obligations (section 608) and debtors who are insolvent are required to request the initiation of insolvency proceedings within 30 days (section 626). Formal declarations of insolvency and the opening of insolvency proceedings are judicial decisions.

Under section 6 of the new legislation, claims are only protected once insolvency proceedings have been formally opened and the court's decision has been published in the official state gazette. The Committee asks whether protection extends to cases where there has been no formal declaration of insolvency and the enterprise has not been placed in receivership. It recalls that the protection of employees' claims must include situations where the employer's assets are insufficient to justify the opening of formal insolvency proceedings (Conclusions 2003, France).

Under the new legislation, employees are protected irrespective of the terms of their contract or their working hours – part-time, full-time and so on - so long as the employment relationship was terminated at least three months before the start of the insolvency proceedings.

The guarantee fund covers unpaid wages and salaries, sums due in respect of paid leave and unpaid allowances in respect of, for

example, temporary layoffs or redeployment. The guaranteed sums and the periods covered vary according to whether the individual concerned was employed for at least three months (1) or for a shorter period (2):

1. Claims are protected for up to six months preceding the start of the insolvency proceedings or the termination of employment. They are subject to an upper limit determined annually by the Social Security Budget Act, which may not be less than two and a half times the minimum monthly wage.

2. Claims are protected in their entirety, subject to a monthly maximum equal to the minimum monthly wage.

The Committee notes 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 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.

The Committee notes that the new legislation only applies to undertakings that can be the subject of insolvency proceedings, which excludes state institutions, public enterprises, trade unions, law and notary offices and housing construction co-operatives. Nor does it apply to persons working for individual employers, public officials and judicial and military personnel. The Committee asks whether there is another form of protection for these categories of employees. It also notes that partners and board members of insolvent undertakings, and their spouses and close families, are also ineligible for protection.

The report indicates that there is a legal maximum period of two months and 24 days between presentation of claims and payment of sums due. The Committee considers that this is a reasonable period. It asks for an estimate of the overall percentage of workers' claims that are satisfied through the guarantee system.

*Conclusion*

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

# Chapter 7 – Conclusions concerning Articles 1, 9, 10, 15, 18, 20 and 24 of the Revised Charter in respect of Cyprus

## 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 Cyprus on 27 September 2000. 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 Cyprus submitted it on 5 November 2007. On 12 February 2008, a letter was addressed to the Government requesting supplementary information regarding Article 15§1. The Government submitted its reply on 18 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).

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

The applicable periods of reference were:

– 1 January 2003 – 31 December 2006 for Article 18§4;
– 1 January 2005 – 31 December 2006 for Articles 1, 9, 10, 15, 20 and 24.

The present chapter on Cyprus concerns 16 situations and contains:

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

In respect of the 3 other situations concerning Articles 10§5, 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 Cypriot 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 Cyprus's report.

*Employment situation*

The Committee notes that, according to Eurostat, growth remained stable during the reference period and reached 4% in 2006.

The employment rate was 69.6% in 2006. It remained stable over the reference period. Nevertheless, it was significantly higher among men than among women – 79.3% compared with 60.3%.

Unemployment fell slightly over the period, from 5.2% in 2005 to 4.6% in 2006. The total number of registered job seekers fell from 13,153 in 2005 to 12,824 (including 7,087 women) in 2006. The long term unemployed as a proportion of all unemployed also fell, from 23.5% in 2005 to 19.3% in 2006. The unemployment rate among young persons (15-24) was stable (4.1% in 2006).

The Committee previously (Conclusions 2004) asked for detailed statistics on employment and unemployment among persons with disabilities. In the absence of a reply, the Committee reiterates its question. It also asks for information in the next report on unemployment among foreign nationals.

*Employment policy*

Priority is given to measures to assist women, disabled persons, the unemployed and young persons, particularly through the activities of the Human Resource Development Authority. These measures are particularly concerned with training and encouraging business creation. As there is no reference to the number of beneficiaries of these various measures, it repeats its question. The Committee also asks whether other programmes specifically aimed at the long term unemployed are planned.

Since 2004, the Centre for the Occupational Rehabilitation of the Disabled has offered special training courses for this group of

persons. According to the report, about forty persons have been trained each year since then.

The Committee notes that total spending on training and skills development rose during the reference period, to 6.5 million Cypriot pounds (CYP; nearly € 10.9 million) in 2006. The Committee asks for details in the next report on total expenditure on employment policies as a percentage of GDP, specifying what proportions are devoted to active and passive measures.

*Conclusion*

The Committee concludes that the situation in Cyprus 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 Cyprus's report.

The last conclusion on the 1961 Charter (Conclusions XVI-1) includes a general description of the legal situation.

1. Prohibition of discrimination in employment

The law on discrimination, which the Committee has considered in earlier conclusions (Conclusions XVI-1 and 2004), has been reinforced by a series of laws incorporating Community legislation on discrimination in employment. In particular, Cyprus has transposed directives 2000/78/EC and 2000/43/EC, which came into force in May 2004. However, the Committee notes from another source[1] that the new legislation does not include all aspects of the two directives, particularly concerning the burden of proof. It again asks for full information in the next report on the implementation of the legislation on discrimination.

As with other states that have accepted Article 15§2 of the Revised Charter, the Committee will examine the legislation banning discrimination based on disability under this provision. Similarly, for

[1] European Anti-Discrimination Law Review, Issue No. 5, 2007, p. 62-65

states such as Cyprus that have accepted Article 20, the right to equal treatment and opportunities without discrimination based on sex is considered under this provision.

In its last conclusions (Conclusions 2004), the Committee noted that foreign nationals could be employed in any field of employment as long as no Cypriot was available and willing to fill the particular vacancy. The Committee ruled that this condition constituted direct discrimination on grounds of nationality against nationals of States Parties lawfully resident in Cyprus and as such was incompatible with Article 1§2 of the Revised Charter. It notes that there is no information in the report on this point. It asks whether the situation in this respect has evolved since Cyprus joined the European Union. It renews its finding of non-conformity on this aspect.

According to another source[1], a knowledge of Greek is obligatory in order to be granted an operating licence by the tourism authority and this has been criticised by the body responsible for promoting equal treatment in Cyprus. The Committee asks for information in the next report on action taken in response to this criticism.

According to another source[2], sexual orientation continues to be a ground for excluding numerous persons from employment. The Committee asks for information in the next report on this situation and the measures taken to deal with it. In addition, it refers on this point to its observation on privacy (see *infra*).

2. Prohibition of forced labour

*Prison work*

In Conclusions 2004, the Committee noted that that work done by prisoners for private enterprises was on an entirely voluntary basis, and that the working hours of prisoners employed inside or outside prisons were the same as those of other workers. The report states that prisoners at the guidance and extra-institutional employment

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[1] European Anti-Discrimination Law Review, Issue No. 5, 2007, p. 62-65.

[2] Report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, Cyprus, Nicos Trimikliniotis, State of affairs up to 8 January 2007, European Network of Legal Experts in the nondiscrimination field, p.103.

centre who work outside of prison receive the same wages as if they were not prisoners. It also says that work areas in prisons satisfy the health and safety standards laid down for workers outside prison.

To complete this information, 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*

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 XVIII-1, §§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.

*Service required to replace military service*

In its last two conclusions (Conclusions XVI-1 and Conclusions 2004), the Committee maintained that that the duration of the service that replaced compulsory military service, generally twice the length of the military service itself, was excessive. The report contains no information on this point. The Committee therefore considers that the situation is unchanged and is still not in conformity with the Revised Charter.

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 states acknowledge the principle of conscientious objection and institute alternative service instead, they cannot make the latter longer than is necessary to ensure that refusal to serve on grounds of conscience is genuine and the choice of alternative service is not seen as advantageous rather than a duty.

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

The Committee considers that in general the conditions to which the payment of unemployment benefits is subjected, including any obligations to take up offered employment, should be assessed under Article 12§1 of the Revised Charter (or Article 12§3 in the case of new developments). However, in certain cases and under certain circumstances the loss of unemployment benefits on grounds of refusal to accept offered employment could amount, indirectly, to a restriction on the freedom to work and as such the situation would be assessed under Article 1§2 (See General introduction to Conclusions 2008, §10).

*Part-time work*

The arrangements for part-time work are laid down in Law 76(I)/2002, which transposes Directive 97/81/EC.

Part-time work is defined as work whose duration is shorter than the statutory working hours. The Committee notes that the law guarantees part-time workers the same level of pay and working conditions as full-time workers for work of an equivalent nature and duration.

In answer to the Committee, the report says that section 7(1)(e) of Law No. 76(I)/2002 also covers equal treatment with regard to leave and section 9 of the law requires employers to examine measures to facilitate access by part-time employees to vocational training to enhance career opportunities and occupational mobility.

*Conclusion*

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

– nationals of States Parties legally residing in Cyprus can only be employed if no Cypriot is available and willing to fill the particular vacancy, which constitutes direct discrimination based on nationality;
– the duration of alternative service is a disproportionate restriction on workers' right to earn their living in an occupation freely entered upon.

*Paragraph 3 – Free placement services*

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

A programme was launched in 2005 to modernise the public employment services aimed at increasing labour market flexibility by a better matching of demand for and the supply of labour. The Committee asks for information on the main achievements of the programme.

It also previously asked (Conclusions 2004) whether placement services were free. In the absence of a reply, it reiterates its question.

The employment service's geographical coverage was a priority during the reference period. Eight more local employment offices were opened and four district and two local offices were upgraded. According to the report, since 2006, 18 specially trained employment counsellors have provided individualised services to the unemployed. The Committee asks for information on total staffing of the various employment services and their qualification levels.

The number of vacancies also fell during the reference period, from 21,582 in 2005 to 20,829 in 2006. However, the Committee notes that the placement rate has increased over the same period, from 17.5% in 2005 to 19.8% in 2006. It asks how long on average is taken to fill vacancies.

The Committee notes that there is still no information in the report on the "market share" of the public employment services, that is the ratio between placements made by the public employment services and the total number of persons recruited on to the labour market. It stated in its last conclusion (Conclusions 2004) that this information, as well as other performance indicators such as the number of interviews with job seekers and of visits to or contacts with employers, was necessary to assess the efficiency of the employment services.

*Conclusion*

The Committee concludes that the situation in Cyprus 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 Cyprus's report.

As Cyprus 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 has considered that the situation with regard to vocational guidance (Article 9), and vocational guidance, education and training of persons with disabilities (Article 15§1), was in conformity with the Revised Charter.

However, concerning vocational training for workers (Article 10§3) the Committee holds that the situation is not in conformity with the Revised Charter on the grounds that it has not been established that the right to an individual leave for training and the right to vocational training for the unemployed are effectively guaranteed.

*Conclusion*

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

**Article 9 – The right to vocational guidance**

The Committee takes note of the information provided in Cyprus's report and notes that there have been no significant changes in the situation, which it has previously considered to be in conformity with the Revised Charter (Conclusions 2007).

As Cyprus 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

Vocational guidance in the education system is provided by the counsellors and teachers of the Counselling and Career Education Service (CCES) of the Ministry of Education and Culture.

b. Expenditure, number of staff and number of persons assisted

Pupils in their last year of lower secondary school may attend career guidance classes in addition to individual counselling sessions.

The staff of the CCES was made up of 109 teachers in 2005-2006.

In the period from 2005 to 2006, vocational guidance sessions were attended by 18,562 lower secondary school pupils (66.38% of the total) and 22,147 general or technical upper secondary school pupils (78.67% of the total).

In the same period, public spending on vocational guidance of the CCES was about 3,200,000 Cypriot pounds (CYP ; € 5.48 million). This amount represents costs for salaries, for the publication and distribution of books and for the organization of seminars, training programs and conferences.

*Vocational guidance in the labour market*

a. Functions, organisation and operation

As part of the process of improving and modernising the public employment services, careers counsellors were given special training to provide tailored vocational guidance to jobseekers based on their qualifications, skills and work aspirations.

As part of the modernisation process, geographical access to services was also improved through the establishment of eight new regional employment offices and the modernisation of four district offices and two local offices.

b. Expenditure, number of staff and number of persons assisted

The number of recipients of vocational guidance corresponds more or less to the number of jobseekers registered with district labour offices. In 2006, this number amounted to some 12,824 people, 7,087 of whom were women. There were 18 vocational guidance counsellors.

In 2006, spending on the operational units of the counsellors working for the public employment services was CYP 230,374 (about € 395,000). Spending on these counsellors' wages amounted to CYP 197,914 (about € 339,000). According to the report, the amount of spending on vocational guidance by district and local employment offices cannot be calculated, as they also offer placement services.

In its previous conclusion, the Committee noted that Vocational guidance in the labour market is mainly provided by the Vocational Guidance Service (VGS) under the Labour Department of the Ministry of Labour and Social Protection, which has regional and district offices throughout the country. In lack of information, the Committee asks again what is the geographical distribution and the number of VGS offices in the country.

*Conclusion*

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

## Article 10 – The 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 Cyprus's report.

As Cyprus has accepted Article 15, measures relating to training for persons with disabilities are dealt with under that provision.

*Secondary and higher education*

The Committee notes from the report that the Examination Service of the Ministry of Education and Culture organises and supervises the annual examinations for entry to the Public Institutions of Higher and Tertiary Education. The new system was launched in 2006 and aims at integrating the final written examinations of the secondary education (*apolyterion*) and the entrance examinations to the higher education. The aim is the acquisition of both *apolyterion* and the eligibility for admission to the higher education institutions, based on the average allocating score.

The Committee notes from the report that vocational education and training is provided through the upper secondary technical and vocational education, the apprenticeship scheme, the afternoon and evening classes of technical schools, the training programmes subsidised by the Human Resource Development Authority (HRDA) and the public institutions of tertiary education. The Directorate of Secondary Technical and Vocational Education (STVE) is responsible for planning, organising, implementing and evaluating the educational programmes that are offered at public technical and vocational schools. Upper secondary technical and vocational education is offered in two directions, theoretical and practical. Graduates of both directions are awarded a Leaving Certificate which is equivalent to that obtained from other public schools of secondary general education and entitles students to pursue further studies at institutions of higher and tertiary education, or enter the labour market as skilled workers. The Committee recalls that under Article 10§1 the states are obliged to introduce mechanisms for the recognition/validation of knowledge and experience acquired in the

context of training activity in order to achieve a qualification or to gain access to general, technical and university higher education on the basis of the sole criterion of individual aptitude. The Committee finds that the situation in Cyprus is in conformity with Article 10§1 of the Revised Charter on this point.

As regards the measures taken to ensure a close link between vocational guidance and training on the one hand and employment on the other, the Committee notes that the third year of studies in the Practical Stream combines a school-based environment with one day per week of work experience, where pupils follow a practical training programme. The industrial placement aims to provide pupils with specialised knowledge and skills gained under actual working conditions. In this way the programme contributes to the pupils´ smooth transition from school to work, the consolidation and implementation of the skills and competencies learned at school, the development of the professional ethics, attitudes and values required in the labour market and society in general and the creation of closer ties between the education and industrial training systems.

The policies, programmes and activities of the HRDA are aimed to reduce skill mismatches, improve mobility, provide increased opportunities for employment, widen the choice of career opportunities and facilitate the continuing training throughout working life to those already in employment, young people and those out of work, thereby supporting, encouraging and promoting lifelong learning.

*Measures to facilitate access to education and their effectiveness*

The Committee notes that there has been no change as regards the number of education institutions and teachers.

The total amount of public expenditure on technical and vocational education in 2005 reached € 13.1 million. Overall expenditure by the HRDA, which is the national agency for training and development, on human resource training and development activities over the two-year period (2005-2006) amounted to more than € 21.7 million. The Committee asks what is the total spending on vocational education as a percentage of GDP.

In its previous conclusion the Committee asked whether nationals of other States party lawfully resident or regularly working in Cyprus enjoyed equal access to secondary and higher education. In this

respect the Committee notes from the report that regardless of their nationality, race, gender, religion or physical disability, all pupils who have completed the third year of Gymnasium successfully and have obtained a Leaving Certificate, are eligible to study in the main-stream STVE. In addition, pupils who come from other countries or from private English schools can attend STVE programmes, provided that they succeed in the special entrance exams. Equality of access to vocational training for all is ensured both by the law and policies of the HRDA. The participation of nationals other than Cypriots in training activities subsidized by the HRDA is governed by the same conditions and regulations as for Cypriots. The Committee asks again whether there are any restrictions to access higher education, other than language and general entry examinations, for nationals of other States party.

*Conclusion*

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

*Paragraph 2 – Apprenticeship*

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

As regards the reference period, the Committee notes that since 1/1/2006, by the decision of the Council of Ministers, the Cyprus Productivity Centre has become the competent authority for managing the Apprenticeship Scheme with a mandate to introduce improvements to the existing scheme and to design a New Modern Apprenticeship with the involvement of social partners.

In reply to its question, the Committee notes from the report that there are various Committees responsible for supervising the apprenticeship scheme. The members of these Committees are appointed by the Apprenticeship Board. The Minister of Labour and Social Insurance appoints apprenticeship system inspectors on an annual basis, one in each district and for each specialisation in order to ensure both the quality and quantity of the apprentices' practical training in industry.

In 2005 and 2006, the Human Resource Development Authority (HRDA) subsidised the apprenticeship training of 271 and 212 apprentices respectively, while subsidies to companies employing apprentices amounted to € 284,342 and € 277,041 respectively. During the same period the HRDA subsidised the practical training of 749 students and school-students in companies in the amount of € 525,420.

The report provides the gross participation rate in the apprenticeship scheme for 2002/2003 which amounted to 1.2% and which represents the percentage of the total number of apprentices in the programmes out of the population in the age group of 16-19 (it amounted to 1.6% for the age group of 15-17). The Committee notes that this percentage has been declining since 1990. It asks that the next report provide this information for the reference period.

In its previous conclusion the Committee asked what rules were governing the termination of apprenticeship contracts and what was the remuneration of apprentices. The Committee repeats these questions.

The Committee concludes that the situation in Cyprus 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 Cyprus's report and refers to its previous conclusions (Conclusions 2005 and 2007) for a general description of the vocational training system.

*Employed persons*

According to the report the vocational training system in Cyprus expressly provides for the training and retraining of adult workers. In its previous conclusion the Committee asked what was the level of participation in training programmes. The Committee notes that according to the Human Resource Development Authority (HRDA) 53,326 persons participated in continuing training programme in 2005 and 57,172 in 2006. The Committee notes from the report that CVET programmes are mainly targeted at working individuals as well as unemployed people who have not completed successfully lower

secondary education or those who have but wish to acquire technical knowledge and skills in a specialty other than their original one.

The Committee asked for two consecutive times (Conclusions 2005 and 2007) whether and under what conditions employed workers were entitled to individual training or retraining leave. The Committee recalls that Article 10§3 requires the existence of legislation on individual leave for training. The Committee examines its characteristics, in particular the length, the remuneration, and the initiative to take it. Since the report again does not provide this information, the Committee holds that it has not been established that the right to an individual leave for training is guaranteed.

*Unemployed persons*

The Committee notes from Eurostat that the unemployment rate stood at 5.2% in 2005 and 4.6% in 2006 which is lower than the EU-15 average (8.1% and 7.7% respectively). The Committee asked for two consecutive times (Conclusions 2005 and 2007) what was the percentage of the unemployed participants in the training programmes out of the total number of unemployed, as well as public expenditure, as a percentage of GDP, on training measures for the unemployed. Since the report again does not provide this information, the Committee holds that it has not been established that the right to vocational training for the unemployed is effectively guaranteed.

*Conclusion*

The Committee concludes that the situation in Cyprus is not in conformity with Article 10§3 of the Revised Charter on the grounds that it has not been established :

– that the right to an individual leave for training is guaranteed;
– that the right to vocational training for the unemployed is effectively guaranteed.

*Paragraph 4 – Long term unemployed persons*

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

In its previous conclusions (Conclusions 2005 and 2007), the Committee asked for two consecutive times what types of vocational training were available for the long-term unemployed and what was the percentage of the long-term unemployed people who participated in training programmes out of the total number of long-term unemployed.

Since the report again does not provide this information, the Committee holds that it has not been established that the right to vocational training for the long-term unemployed is effectively guaranteed.

*Conclusion*

The Committee concludes that the situation in Cyprus is not in conformity with Article 10§4 of the Revised Charter on the grounds that it has not been established that the right to vocational training for the long-term unemployed is effectively guaranteed.

*Paragraph 5 – Facilities*

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

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

In its previous conclusions (2005 and 2007), the Committee asked for detailed information on the financial aid system available to higher education students and on the conditions under which it is granted. It notes that the report does not provide this information.

However, the Committee notes from Eurybase (2006/07) that, for example, the fees for Cypriot (and other EU) undergraduate level students at the University of Cyprus total 1,000 Cypriot pounds (CYP; € 1,600) per semester and these are paid in full by the State. The fees for international (other than EU) undergraduate students are € 3,200 per semester. In the Open University of Cyprus the tuition fees for undergraduate international (other than EU) students are set at 700 CYP (€ 1,120) while Cypriot and EU citizens do not pay any fees.

In its previous conclusion the Committee noted that nationals of other States Party are eligible for financial assistance under the

same conditions as Cypriots. However, having observed the information contained in the Eurybase report, the Committee notes that it is not clear whether the equal treatment of nationals of non-EU States Parties lawfully resident or regularly working in Cyprus with respect to fees and financial assistance in higher education is guaranteed. The Committee recalls that according to the Appendix to the Charter, equality of treatment in these matters shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence should be required from students and trainees admitted to reside in any capacity other than being a student or a trainee, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training. The Committee therefore asks whether this is the case in Cyprus. In the meantime it reserves its position on this point.

*Training during working hours (Article 10§5 c)*

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

*Efficiency of training (Article 10§5 d)*

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

*Conclusion*

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

**Article 15 – The 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 Cyprus's report and the additional information submitted by the Government on 18 March 2008 in reply to further questions addressed to it by the Committee.

It notes that according to the report, during the reference period updated figures were not yet available as regards:

– the total number of persons with disabilities, including the number of children;
– the number of students with disabilities following mainstream vocational facilities;
– the number of adults with disabilities participating in mainstream vocational training facilities and the possibilities for them to transfer from special to mainstreaming vocational training facilities.

The Committee points out that should this information not be provided in the next report, nothing will establish that the situation of Cyprus is in conformity with Article 15§1.

*Anti-discrimination legislation*

In its previous conclusion (Conclusions 2007), the Committee asked whether the Law on Education and Training of Children with Special Needs (Law No. 113(I)/1999) conferred an effective remedy on those who were found unlawfully excluded or segregated or otherwise denied an effective right to education. According to the additional information provided by the Government, parents of children with special educational needs may appeal (within thirty days) against the decisions taken by the Special Education and Training District Committee. Following such appeal, if the Committee's decision is confirmed, parents may still appeal to the higher body (the Central Committee for Special Education and Training.

As regards the explicit prohibition by law of discrimination based on disability in education and training, the Committee notes from another source[1] that Law No. 42(I)/2004 on the combating of racial and other kinds of discrimination (Commissioner for Administration) includes non-discrimination on the ground of "special needs" (terminology used by the Law to refer to persons with disabilities). The Law establishes that the Commissioner for Administration is the national Equality Body empowered, *inter alia,* with the task of promoting equality of opportunity in numerous areas including education and access to vocational training.

*Education and vocational training*

The Committee notes from the same source mentioned above that in 2006 the Equality Body examined complaints of lack of suitable accommodation for dyslexic children in exams. In its decision dated 31 October 2006, the Equality Body criticised the Pancyprian School Exams Law (Law No. 22(I)2006). It found that this Law and the one on Education and Training of Children with Special Needs (Law No. 113(I)/1999) introduced indirect discrimination on the ground of special needs in the field of education and asked the Attorney General to revise the laws. The Committee notes from the additional information submitted by the Government in reply to its specific questions in this regard that the 22(I)2006 Law was amended with regard to national exams following the Equality Body's recommendations and specific instructions concerning the use of computers with a speller and other facilities have been addressed to all Special Education and Training Committees. The Committee requests the next report to highlight any envisaged or adopted amendment of the Law on Education and Training of Children with Special Needs.

The Committee also notes that in 2006 a governmental body applied to the Equality Body for an opinion as to whether terminating the training of a trainee who had acquired a disability during training

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[1] Cyprus 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 Nicos Trimikliniotis 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

would constitute discrimination prohibited by law. On 20 September 2006, the Equality Body held that it would indeed amount to less favourable treatment, which is prohibited by law, and recommended that the issue of training be seen separately from the issue of employment for a specific task.[1] The Committee wishes the next report to provide information on any follow-up to this decision of the Equality Body.

Finally, the Committee asks the next report to also indicate whether persons with disabilities or other bodies lodged any other complaint with the Equality Body regarding their effective right to access education or vocational training. It also asks whether the Equality Body carried out any investigation or survey in this regard and what were the conclusions thereof.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Cyprus 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 Cyprus's report.

According to the report, no up-dated figures were yet available during the reference period as regards:

– the number of persons with disabilities integrated in the ordinary labour market;
– the general rate of progress of persons with disabilities from sheltered employment into the ordinary labour market.

The Committee reiterates its request for such figures.

[1] Idem p. 13. See also European Anti-discrimination Law Review, No. 5 – 2007, News from the EU Member States, Cyprus (p. 64).

*Anti-discrimination legislation*

As regards the Committee's previous requests for information (Conclusions 2005 and 2007) on the right of persons with disabilities to seek remedies against discrimination under the existing non-discrimination legislation, the report indicates that complaints may be lodged with courts and that these may impose the payment of fines for discriminatory behaviour, treatment or practice.

Moreover the Committee also notes from the report prepared by the European Network of Legal Experts in the non-discrimination field, that "all the anti-discrimination provisions found in the Cypriot law are enforceable in the public and the private domain against the state and against private individuals, in accordance with the judgement in the case of Yiallourou v. Evgenios Nicolaou (Judgment of 2001 of the Supreme Court of Cyprus), where the court ruled that all rights guaranteed under the constitution are directly applicable in the public and private sphere. However, given the long time and high costs involved in litigation, this principle is hardly ever utilised in practice. By contrast, the procedure of applying to the Equality Body to investigate complaints of discrimination is simple, cost free and widely used."[1]

The Equality Body is competent to handle claims regarding discrimination in the workplace, such as conditions for access to employment, self-employment and occupation, employment and working conditions (including dismissal and pay) and membership or/and involvement in an organization of workers and employers. However, according to information collected by the European Network of Legal Experts, the Equality Body is empowered to impose fines, which are very low and offer little deterrence to potential perpetrators. It is therefore not possible to assess whether or not such sanctions are adequate, effective, proportionate and

[1] See p. 5 of the Executive summary of the Cyprus 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 Nicos Trimikliniotis 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.

dissuasive. Moreover, there have not been any cases yet in Court on this issue. [1]

As regards its request (Conclusions 2007) to indicate whether there is an obligation for the employer to adjust working conditions, how reasonable accommodation is implemented in practice and whether there is case law on the issue, the Committee notes that the report does not provide a reply but observes from the European Network of Legal Experts' report that "The law does not provide that failure to meet the duty of reasonable accommodation amounts to discrimination. (…) The test of reasonableness is much wider in the Cyprus law than in the Employment Directive (…) and clearly falls short of creating a full-blown mandatory regime. No case has actually been examined in court so far to assess how courts would determine whether accommodation is 'reasonable' or whether it imposes a 'disproportionate burden'. When comparing the provisions under the Directive, which provide for a test of whether 'such measures would impose a disproportionate burden on the employer' to the criterion introduced into Cyprus law regarding the socio-economic situation of the disabled (Article 9), the disparity between the Cyprus law and the Employment Equality Directive is apparent".

The Committee asks the next report to comment on the above-quoted findings of the European Network of Legal Experts in the non-discrimination field, while informing it about any amendments to Law 57(1)/2004 on Persons with Disabilities and Law No. 42(I)/2004 on the combating of racial and other kinds of discrimination (Commissioner for Administration) and any measure taken in practice to implement reasonable accommodation.

*Measures to promote employment*

With regard to measures to promote employment of persons with disabilities in the ordinary market, the report and another governmental source[2] highlight the implementation of the following new

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[1] Idem pp. 6 and 7.

[2] Cyprus, Ministry of Justice and Public Order, Brief report on issues concerning the fight against discrimination, January 2008, available at: http://www.mjpo.gov.cy/MJPO/MJPO.nsf/0e1012448b5b9766c2256ede00482425/b0fc8c0fcf7db557c2256f0a0037f720/$FILE/briefCyreport_2008.doc

schemes, co-financed on an equal basis by the European Social Fund and the Republic of Cyprus:

– the scheme for the vocational training of persons with severe disabilities to help their integration to the labour force and society in general;
– the scheme through which incentives are offered to employers to facilitate the employment of persons with disabilities in the private sector, through subsidisation of part of their labour costs and a subsidy to make any adjustments necessary to the workplace;
– the scheme for setting up small business units, through subsidisation and grants.

The Committee reiterates its request for information on how many persons with disabilities are integrated in the ordinary labour market, including through the programmes recalled in its previous conclusion as well as through these new schemes. Meanwhile, it reserves its position on the conformity of the situation and points out that should the requested information not be provided in the next report, nothing will establish that the situation is in conformity with Article 15§2.

The Committee notes in response to its questions on the fact that a priority of employment reserved to persons with disabilities should not be restricted to a specific category of persons for one sole profession (such as people with visual impairment being hired as telephone operators), the report clarifies that "persons with visual impairment can choose and have a priority in a job they prefer".[1] The Committee asks the next report to provide any relevant example of good practice in this regard as a study[2] on the employment experiences of higher education graduates with disabilities in Cyprus acknowledges the persistence of significant barriers in their employment (especially for the visually impaired) as well as a high degree of frustration (jobs felt not to match qualifications).

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[1] See p. 70, 5th National Report on the implementation of the European Social Charter (revised) submitted by the Government of Cyprus.

[2] "Employment experiences of people with disabilities in Cyprus" by K. Hadjikakou and D. Hartas, International Journal of Disability, Community & Rehabilitation, Volume 6, No. 1, 2007, published at: www.ijdcr.ca.

As to sheltered employment, the Committee reiterates that Article 15§2 of the Charter requires that persons with disabilities be employed in an ordinary working environment; therefore sheltered employment facilities 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.

In this context, the Committee requests the next report to comment on the following critical in the EU report on the situation of fundamental rights in Cyprus as regards the *Christos Stelios Ioannou Foundation* (sheltered employment) voiced: "the philosophies, policies and practices of the Foundation do not reflect the current international consensus on good practice, as (…) (a) too many clients are congregated on a single site, which has in effect become a permanent placement; (b) there is not enough movement of the clients from the central site into community settings and (c) not enough support is available to enable those who are not Foundation clients to work and live in the community. Figures show that out of the 156 current clients between the ages of 18 to 57, 98 (63%) have been attending since 1990 and 44 (28%) since the Foundation was established in 1983. 60 people have been successfully rehabilitated into the community in the 17 years since the Foundation was established – this would average out at three persons per year. These figures suggest that the Foundation is providing what is in effect a permanent placement for a significant number of clients."[1]

*Conclusion*

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

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[1]See p. 84 of the report submitted to the EU Network of Independent Experts on Fundamental Rights by Achilleas Demetriades on 15 December 2005 (reference: CFR-CDF/CY/2005). The documents of the Network may be consulted at:

http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_en.htm

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

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

*Anti-discrimination legislation and integrated approach*

The Committee points out that Cyprus's anti-discrimination legislation (Act No. 127(I)/2000 on persons with disabilities) forms the legal framework on which the equal treatment and full social integration of persons with disabilities is based. It notes that this Act expressly refers to mobility, transport, telecommunications, culture and leisure (sections 4, 7 and 8). The Committee asks for additional information on the Act within the material scope of Article 15§3.

On the matter of legal remedies, the report states that persons with disabilities who have suffered discrimination can go to court to seek compensation for any damage incurred and that fines can be imposed on offenders. The Committee asks for examples of relevant case-law. It also asks if all the authorities involved in implementing policies for persons with disabilities have integrated planning programmes.

*Consultation*

According to the report, a new Act (No. 143(I)/2006) on the consultation procedure between the state and agencies dealing with persons with disabilities was adopted in 2006. Through this Act, the Cypriot Confederation of Organisations for Persons with Disabilities is made an official partner of the state, involved in drawing up state social policy and programmes and legislation relating to persons with disabilities.

*Forms of financial aid increasing the autonomy of persons with disabilities*

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

*Measures taken 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.

Under the Act on public assistance and services, as amended in 2006, public assistance is granted to persons residing lawfully in Cyprus whose basic income is inadequate. Persons with disabilities are entitled to home help or personal assistance arrangements to help them to remain at home. The Committee asks how much of the costs of these services are covered by the state.

Communication

Some television channels broadcast a daily news bulletin in sign language for persons with hearing impairments. The Committee notes from another source[1], however, that sign language is not regarded as an official language in Cyprus. The Committee asks whether measures are being taken to have sign language recognised as an official language.

As far as telephone services are concerned, the Cyprus Telecommunications Authority (CITA) has set up systems that are especially

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[1] Report on the situation of fundamental rights in Cyprus in 2005, CFR-CDR/Rep[CY]2005, http://cridho.cpdr.ucl.ac.be/documents/Download.Rep/Reports2005/NationalReport/CFRCyprus2005.pdf

suited to persons with disabilities. The Committee asks again what has been done to promote access to the new information and telecommunication technologies.

Mobility and transport

According to the report, the requirement for public transport to be accessible is not totally respected, public transport is not free for disabled persons and there are no reductions for accompanying persons. The Committee asks if measures are being taken to improve access to public transport for persons with disabilities. It also asks for information on the regulations on sea transport.

Housing

According to the report, 56 housing programmes for persons with disabilities were carried out in 2006 by NGOs and supported financially by the authorities. Persons with disabilities are also covered by a programme of social assistance for the improvement of housing conditions. In 2006, the number of people claiming this aid was 38% higher than in 2004.

Culture and leisure

Persons with disabilities do not have free access or reduced-rate access to facilities offering cultural and recreational activities. In the absence of any reply, the Committee asks again what measures are being taken to improve access.

The Committee emphasises that if the next report does not provide all the above requested information, there will be no evidence that the situation in Cyprus is in conformity with Article 15§3 of the Revised Charter.

*Conclusion*

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

**Article 18 – The right to engage in a gainful occupation in the territory of other Parties**

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

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

In its last assessment, it noted that under the Children's Act Cypriot nationals could be prevented from leaving the country if they were legally liable for the care and maintenance of one or more children under the age of sixteen and wanted to leave the country without them, unless they could provide evidence that the child or children were not likely to become dependent on public funds or be exposed to moral danger or neglect. The report states that this provision ceased to be applied during the reference period and the new bill to amend the Children's Act does not include such a provision. The Committee asks for this to be confirmed in the next report.

It notes that the only restrictions on the right to leave the country are ones necessary for the proper administration of justice or provided for in the national guard laws.

In connection with the administration of justice, the report explains that arrest warrants issued in criminal proceedings and civil court orders are automatically registered in a record and the persons concerned are prohibited from leaving the country.

In addition, male persons planning to leave the country, even for a short period, are obliged to obtain a special licence from the Ministry of Defence, if they are under 21. The Committee asks what conditions govern the granting of this authorisation, how long it takes and the procedure to be followed. It also wishes to know whether persons whose request for authorisation has been rejected can appeal against the decision, and if so to what body.

The Committee concludes that the situation in Cyprus 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 Cyprus'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 2004 and 2006, Cyprus, Article 20).

The report indicates that Law 205(1) of 2002 on the equal treatment of men and women in employment and vocational training has been amended in 2006. The main purpose of the amendment was to make the definition of sexual harassment clearer and distinguish it from non-sexual gender-based harassment. Furthermore, NGO's are now allowed to represent their members in court or submit a complaint on behalf of their members. Also, social partners are given more say in measures taken on enterprise level.

Law 177 of 2002 on equal pay for men and women for similar work or work of equal value was amended in 2004 to harmonise Cypriot legislation with Council Directive 75/117/EEC relating to the application of the principle of equal pay for men and women[1]. Whilst the aim and contents of this law are in line with the requirements of the Revised Charter, the Committee recalls that it came to a conclusion of non-conformity on this point in its previous conclusion because the scope of comparison of jobs and wages did not extend outside the company directly concerned. The recent amendment to Law 177 of 2002 does still not make provision for comparisons outside the same employer. The report indicates that the authorities in principle agree with the Committee's conclusion on this point and are considering changing the law to permit that comparison of wages can be extended outside the company concerned. Until this amendment is introduced in the law the Committee must reiterate its conclusion of non-conformity.

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[1] *Official Journal L 045, 19/02/1975 P. 0019 - 0020*

In Conclusions XVI-1 (under Article 1§2), the Committee noted that that under the collective agreement for the construction industry there were two job categories with different pay and men were automatically included in the higher paid one. According to the report (under Article 1§2), this collective agreement was scheduled to be amended as of 1 January 2006. The Committee asks what amendments have been made to the agreement.

The Committee notes that Law 133 of 2002 on equal treatment between men and women in occupational social security schemes guarantees equal treatment in this area.

*Specific protection measures*

The 2006 amendment of the basic law on equal treatment of men and women in employment and vocational training provides that certain occupations are excluded from the scope of this law. The Committee asks which are the concrete occupational activities that can only be entrusted to persons of one sex and are thus excluded from the law. It recalls in this respect that any exclusion of activities from the principle of equal treatment should be exceptional and subject to strict interpretation.

The report indicates that under the Maternity Protection Regulations of 2002, when the nature of certain activities may be detrimental to the health and safety of women employees that are pregnant, have recently given birth or are breast feeding, the employer must undertake a risk assessment and, if necessary, may remove or transfer the employee from such an activity. The Regulations do not explicitly forbid this category of employees to any work, and the restrictions are only derived from the assessment of the risks at the workplace. 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.

*Position of women in employment and training*

According to the report, the women's share of overall employment in 2006 was 60,3% (up from 58.4% in 2005). The rate for men was 79.4% (up from 79.2% in 2005).

Despite the progress in women's participation in the labour market, women continue to have higher unemployment rates. The overall

unemployment rate was 5.2% in 2005, falling to 4.6% in 2006. Unemployment rates for women fell from 6.5% to 5.4%, but continued above the average rates as well as those for men, which were 4.3% and 4.0% (Eurostat statistics).

A large majority of workers in part-time and temporary employment continue to be women. In 2006, 4.3% part-time workers out of total employment were men, against 12.1% women; and the percentage of employees with temporary contracts was 7.9% males, compared to 19.0% females (Eurostat statistics).

With regard to the gender pay gap, the report states that in 2005 men were paid on average 25% more than women. The Committee notes from Eurostat that the European Union average (27 countries) for 2005 was 15%, and that the Cypriot rate was the highest for the whole EU. Among the reasons creating the wage gap are the overrepresentation of women in non-skilled occupations and low wage sectors. The report indicates that in 2006 the authorities have undertaken a comprehensive study with a view to identifying problems and defining possible ways, including best practices in other countries, in order to reduce the gender pay gap. The Committee asks to be kept informed on the outcome of this study.

As regards occupational training, the report states that the proportion of women participating in training activities during the reference period has remained more or less the same as in the previous reporting period, that is, 41-42%.

*Measures to promote equal opportunities*

The first National Action Plan on Gender Equality has been prepared and will cover the period 2007-2013. One of the six policy areas included in the plan relates to employment and vocational training. The Committee asks to be kept informed on the implementation of this Action Plan.

As to the policy measures in force during the reference period to increase female participation in employment, the report indicates that the scheme for the Encouragement, Strengthening and Reinforcement of Female Entrepreneurship has continued. There was also a scheme for the promotion of training and employability of women who do not work, and grants to NGO's and local communities for the development of child care facilities have continued.

The report also states that there has been an increase of public funds allocated to NGO's and the National Machinery of Women Rights to promote and implement gender equality programme.

The Committee notes from another source[1] that although no study has been conducted it appears that the content of collective agreements at sectoral and company level do not take gender into account in the setting of terms and conditions of employment. 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 Article 20 of the Revised Charter, and therefore requests that the next report contain information on any developments in this respect.

*Conclusion*

The Committee concludes that the situation in Cyprus 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.

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

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

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

*Scope*

The Committee observes that Cypriot law still excludes from the protection against dismissal employees who have not completed a continuous period of 26 weeks with their employer regardless of their qualifications and thus reiterates its finding of non-conformity on this ground (see Conclusions 2005 and 2007).

*Obligation to provide a valid reason for termination of employment*

The Committee had examined the valid reasons for termination of employment under Section 5 of the Termination of Employment Law in its Conclusions 2005. It asks the next report to give a summary of significant case law showing how these grounds for termination are interpreted by the competent courts in practice. It wishes in particular to know under which conditions an employee may be made redundant for economic reasons pursuant to Section 18 of the said law and whether courts are empowered to review the facts underlying the economic reasons invoked by the employer.

The Committee had further observed that pursuant to Cypriot law, employment may be terminated where an employee has reached the retirement age and that the latter is fixed according to the contract of employment, collective agreements or legislation.

The report specifies that once an employee has attained retirement age he is entitled to all benefits resulting from a collective agreement, membership in an occupational pension scheme etc. Retirement age does not necessarily have to correspond to the pensionable age of the Social Insurance Scheme (65 years) and an employee may continue to work even after having reached the pensionable age on the basis of a corresponding agreement with the employer. However, the Committee also notes that the Termination of Employment Law stipulates that an employee is only entitled to compensation in the event of unfair dismissal if he or she has not yet attained the age of 65 years, i.e. that after having reached the

pensionable age the protection afforded under the Termination of Employment Law does in principle no longer apply.

In reply to the Committee's question as to whether there are specific procedures to be followed once an employee reaches the retirement age or whether employees who reach this age are automatically dismissed, the report states that no specific procedure exists in this respect.

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.

In reply to the Committee's question the report explains that Cypriot legislation does not oblige employers to provide in writing the reasons for a dismissal except in the event of collective redundancies. The Committee notes from another source[1] that in case of dismissal for disciplinary reasons, the labour courts nevertheless hold that general legal principles are applicable including the employee's right to be informed of the charges against him and to have adequate time to present his case. The Committee asks for confirmation in the next report that it is established case law of Cypriot courts that employees have the right to be provided with the reasons for their dismissal.

*Prohibited dismissals*

The Committee examined the situation in Conclusions 2005 and found that the situation was in conformity with Article 24 in this respect.

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[1] Internet site of the International Labour Organisation (Country summary – Cyprus – Termination of Employment) : www.ilo.org

*Remedies and sanctions*

The Committee notes that an employee may bring a case before the Labour Disputes Court in case of unlawful dismissal. The Labour Disputes Court may award compensation which cannot be less than the amount the employee would receive if made redundant but at the same time cannot exceed the wages of a period of two years. An employee may claim a higher amount of compensation from the District Court. The Labour Disputes Court may order reinstatement, but only in case of workplaces with more than 20 employees. In such a case the compensation awarded cannot exceed twelve months wages. Also in this case the employee may claim a higher amount of compensation from the District Court.

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. It finds the situation in Cyprus not to be in conformity with the Revised Charter in this respect.

*Conclusion*

The Committee concludes that the situation in Cyprus is not in conformity with Article 24 of the Revised Charter on the grounds that:

– employees who have not been employed with their employer for a continuous period of 26 weeks are not entitled to protection against dismissal regardless of their qualifications, and
– compensation for unlawful termination of employment is subject to a ceiling.

In accordance with Article 21-1§3 of the Committee's Rules of Procedure, a partly dissenting opinion of Mr S. Evju, joined by Ms M. Schlachter and Ms A. Ciampi, members of the Committee, is appended to this conclusion.

**Dissenting opinion of Mr S. Evju**

*Conclusion relating to Article 20*

The Committee has reached a conclusion of non-conformity on the ground that "it is not possible to make a comparison of pay and jobs outside the company directly concerned where this is necessary for an appropriate comparison". 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.

**Partly dissenting opinion of Mr S. Evju, joined by Ms M. Schlachter and Ms A. Ciampi**

*Conclusion relating to Article 24*

As one reason for finding the situation in Cyprus not in conformity with Article 24 of the Revised Charter, the Committee points out that employees who have not been employed with their employer for a continuous period of 26 weeks are not entitled to protection against dismissal, regardless of their qualifications. This reiterates previous conclusions for Cyprus (C 2005, 111; C 2007, 345).

I have a different opinion on this point. The 26 weeks (half a year) concerned should be considered a probationary period. This is made clear in Cyprus fourth report (2006) under the Revised Charter, which states, i.a., "Employees who have not completed a continuous period of 26 weeks of employment with their employer are not entitled to any compensation in the event of dismissal since the six months periods is considered to be a period on probationary basis" (p. 96).

This being so, the case of Cyprus on this point is fully comparable with that of Italy, in which I have consistently held that a probationary period of up to a maximum of six months cannot in general terms be deemed to be not reasonable within the meaning of the Appendix to Article 24. In addition, I have noted that, i.a., that within the bounds of what is generally a "reasonable duration" of a probationary period I find the imposition of a requirement of shorter probationary periods for some categories or groups of workers based on the workers' "qualifications" to be unfounded.

My having overlooked the parallel in the two preceding conclusions for Cyprus is highly regrettable. But in no way can it preclude me from now expressing the view I find to be proper and correct.

# Chapter 8 – Conclusions concerning Articles 1, 9, 10, 15, 20, 24 and 25 of the Revised Charter in respect of Estonia

## 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 Estonia on 11 September 2000. 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 Estonia submitted it on 2 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)
– 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).

Estonia has accepted these articles with the exception of Articles 10§2, 10§5 and 18.

The applicable reference periods were:

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

The present chapter on Estonia concerns 14 situations and contains:

– 8 conclusions of conformity: 1§1, 1§3, 10§1, 10§3, 10§4, 20, 24 and 25;
– 6 conclusions of non-conformity: 1§2, 1§4, 9, 15§1, 15§2 and 15§3.

The next Estonian 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 Estonia's report.

*Employment situation*

The Committee notes that, according to Eurostat, growth in Estonia continued to accelerate during the reference period, as it rose from 8.3% in 2004 to 11.2% in 2006.

The employment rate continued to grow during the reference period, from 63% in 2004 to 68.1% in 2006, as did the female employment rate, from 62.1% in 2004 to 65.3% in 2006.

Unemployment continued to fall, and did so more markedly, from 9.7% in 2004 to 5.9% in 2006. Similarly, female unemployment fell from 8.9% in 2004 to 5.6% in 2006 and unemployment among young persons (15-24) from 21.7% to 12%. These rates are below the EU-15 average for 2006 (respectively 7.7%, 8.5% and 15.7%). Long-term unemployment as a percentage of total unemployment also decreased, from 52.2% in 2004 to 48.2% in 2006, but it is still slightly above the EU-15 average (42.1% in 2006).

According to the report, in 2006, the unemployment rate among people with disabilities was 8.4% (4,023 people) while it was 9.7% among foreigners (compared to 15.6% in 2004). The Russian-speaking minority, most of whom live in the north-east, are the minority that are most affected by unemployment. Unemployment rates vary considerably from one region to another (from 5.1% in the centre to 16.2% in the north-east in 2006). The Committee asks what steps are planned to try to reduce these disparities.

*Employment policy*

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

– to increase the number of jobs on offer;

– to prevent the exclusion of those groups that are most at risk of unemployment.

It also notes that a particular effort was made during the reference period in the activation of the unemployed. Under a new Labour Market Services and Benefits Act adopted in 2005, six new active measures for unemployed persons were introduced to make placement procedures more efficient by appraising each individual's situation. These new measures are aimed in particular at the most disadvantaged groups (young people, long-term unemployed and people with disabilities) and relate mostly to work experience.

In reply to the Committee, the report states that an individual action plan is established for each unemployed person belonging to a disadvantaged group within five weeks of registering with the public employment services (the waiting time is four and a half months for other unemployed people). Another aim of the new act is to foster active job seeking through the systematic involvement of unemployed people in active measures but also to discourage them from signing off from the public employment services (thanks among other things to the training grants to which they are entitled).

The Committee notes from another source[1] that a number of measures to promote employment among young people were introduced as part of the 2006-2013 Youth Employment Strategy. They focus on acquiring work experience and promoting entrepreneurship.

The Committee notes that a total of 7,073 unemployed people attended training in 2006. 16,324 new jobs were registered in 2006 and 5,731 of these were created as a result of the actions of the public employment services. The Committee asks for the next report to include details of the total number of participants in active measures and the activation rate of unemployed persons. It also asks for information on the results of the new measures referred to above.

It notes that total spending on active and passive employment policy measures remained stable during the reference period (at 0.2% of GDP) whereas the EU-15 average was 2% of GDP in 2006. The

[1] National Action Plan for Employment 2006

portion of spending devoted to active measures in 2006 was also stable (at 0.05% of GDP), whereas the EU-15 average was 0.5%.

Conclusion

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

Estonia ratified ILO Convention No. 111 (Discrimination, Employment and Occupation) in 2005. In addition, the Criminal Code was amended in 2006 to make public incitement to discrimination an offence while sexual orientation was added to the list of possible causes of discrimination, in addition to nationality, race, colour, sex, language, origin, religion, political opinions and financial or social status.

Section 10 (3) of the Employment Contracts Act also prohibits all direct or indirect discrimination on grounds of sex, racial origin, age, ethnic origin, language proficiency, disability, sexual orientation, duty to serve in armed forces, marital or family status, family related duties, representation of the interests of employees or membership of an employees' association, political opinions or membership of a

political party, and religious or other beliefs. The Act was considered in detail in Conclusions 2006.

According to a survey quoted in the report, 14% of persons questioned had worked with someone who had suffered age discrimination. 8.6% of respondents aged 16 to 29 and 2.6% of those aged 50 to 64 said that they had experienced discrimination based on their age. Under an amendment to the employment contracts legislation dated 8 January 2006, employers may no longer terminate a contract because an employee has reached the age of 65 and has become eligible for a full retirement pension. In addition, under the Labour Market Services and Benefits Act 2006, persons aged 16-25 or between 55 and retirement age are now defined as risk groups on the labour market and receive special assistance, particularly with finding work when unemployed.

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 (Conclusions 2006).

Victims of discrimination in Estonia are eligible for compensation for pecuniary and non-pecuniary damage and there is no upper limit to the amounts the courts may award. Nor is there any statutory maximum to the damages that may be paid for discriminatory termination of contract.

Social partners involved in discrimination disputes are entitled to ask the courts to rule that the prohibition of discrimination has been violated. According to the report the same applies to any other interest groups involved in such disputes.

A gender equality commissioner was appointed in 2005, but the gender equality commission is not yet in operation. The so-called chancellor of justice (*Õiguskantsler*) offers conciliation at the request of persons who consider themselves to have been discriminated against by individuals or legal persons. He assesses the impact of legislation, reports to parliament, the Government, central and local government agencies, other interested persons and the general public on how the principles of equality and equal treatment are

applied and makes proposals for amending legislation. He is also responsible for promoting equal treatment and national and international co-operation between individuals, legal persons and Government and local agencies. The Committee again asks for information on practical steps taken to promote equality in employment for all of the forms of discrimination prohibited by law.

The Committee recalls 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 Parties 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 the public interest and order or national security and involve the exercise of public authority.

According to the current report and the previous one (Conclusions 2006), nationals of European Union member states may be appointed to any post in central or local government, even as senior officials, except ones involving the exercise of public authority. The only conditions to be met are those prescribed in law, such as language proficiency. Nationals of non-European Union member states cannot work as central or local government officials. The Committee asks for confirmation that there is therefore a difference of treatment in access to employment between nationals of European Union member states and those of state parties that are not members of the Union, and for the reasons for this difference. It also notes that only Estonian citizens may be appointed to positions that involve the exercise of public authority and protection of the public interest. These concern, for example, the direction of higher administrative agencies, the exercise of state supervision, national defence and the judicial power, those handling state secrets, representatives of the public prosecution service and diplomatic representations of the state, together with posts in which officials are empowered to restrict the basic rights and freedoms of persons in the interests of public order and security.

2. Prohibition of forced labour

Article 29 of the Estonian Constitution prohibits forced labour. The only exceptions are specified in paragraph 2 of this article, and concern military and alternative service, measures to prevent the spread of infectious diseases, natural disasters and work which by law is required of persons convicted of offences. The Committee considers that these exceptions are compatible with Article 1§2 of the Revised Charter. It asks whether there are any other circumstances in which persons may be required under Estonian law to perform work without their consent.

*Prison work*

Under the prison legislation, prisoners are required to work, as far as possible, in accordance with their physical and mental capacities. Otherwise they must assist in the upkeep of the prison. The only categories of prisoner not required to work are ones who are over 63, who are taking part in general education, secondary vocational education or vocational training, who are unable to work for health reasons or who are raising a child aged under 3. Working conditions must be compatible with the employment protection legislation. Twenty-one days of leave are granted after one year's work. Prisoners are paid at least one fifth of the minimum wage.

Authorisation may be granted to individuals or legal persons to establish plants in prisons. Prisoners' consent is required before they can work in such plants.

The Committee asks whether prisoners can be required to work outside prison, without their agreement, for a firm or private body. It also asks what types of work prisoners may be obliged to perform.

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

*Service required to replace military service*

The Committee notes from the report that there have been no changes in the situation it previously considered unsatisfactory, and that the Government has no intention of changing it. Military service lasts 8 months. However it is extended to 11 months for non-

commissioned officers, specialists and those undertaking reserve officer training. Alternative military service lasts 16 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 alternative service instead, it cannot make the latter longer than is necessary to ensure that refusal to serve on grounds of conscience is genuine and the choice of alternative service is not seen as advantageous rather than a duty.

Under Article 1§2 of the Charter, alternative service may not exceed one and a half times the length of armed military service. Since alternative service may last up to twice the length of military service, the situation in Estonia is not compatible with the Revised Charter.

*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*

Current anti-terrorism legislation in Estonia does not bar individuals from filling certain posts.

*Conclusion*

The Committee concludes that the situation in Estonia is not in conformity with Article 1§2 of the Revised Charter on the grounds that the length of alternative service to military service is excessive and restricts the 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 Estonia's report.

It notes that as a result of the new Labour Market Services and Benefits Act, which came into force on 1 January 2006, the fifteen regional employment offices are now attached to the Labour Market Board. There are also local employment offices in Estonia's small towns.

The Committee notes that the decline in the number of registered unemployed continued during the reference period. A total of 48,167 unemployed people were registered with the employment services in 2006. This reduction is accounted for by the acceleration in the creation of new jobs and the fall in unemployment.

According to the report, a total of 30,263 vacancies were notified to the employment services in 2006. 16,324 unemployed people found work and 5,502 of these were placed by the employment services, meaning that the placement rate was 18.2%.

According to the report, no data are available on the average time required to fill a vacancy.

In reply to the Committee, the report points out that the Estonian economy's good health in recent years has made it possible to create more jobs and has led to a reduction in the number of job-seekers and a fall in the workload of public employment service staff. However, there are plans to increase the number of staff employed by these services.

The act cited above has also simplified the conditions in which private employment agencies may engage in their activities. The activity permits which used to be issued by the Ministry of Social Affairs have been replaced by a simple entry in the Register of Economic Activities, on which there is no time limit. The Committee asks again what percentage of the market the public employment services represent, that is placements made by the public employment services as a percentage of the total number of persons recruited on to the labour market.

In reply to the Committee, the report states that the project launched by the Labour Market Board in 2004 with the aim of involving

employers' and workers' representatives more closely in employment policy has been fleshed out by a proposal by the Ministry of Social Affairs on transforming regional employment boards into co-operation bodies.

*Conclusion*

The Committee concludes that the situation in Estonia 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 Estonia's report.

As Estonia 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.

In these conclusions, the Committee found that the situation with regard to continuing vocational training for workers (Article 10§3) is in conformity with the Revised Charter.

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 only registered unemployed persons and those threatened with unemployment have access in practice to vocational guidance services in the labour market. It also found that the situation with regard to education and training of persons with disabilities (Article 15§1) is not in conformity with the Revised Charter on the ground that the anti-discrimination legislation covering education and training for persons with disabilities is inadequate.

*Conclusion*

The Committee concludes that the situation in Estonia 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 Estonia's report.

As Estonia 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 notes that various steps were taken during the reference period to extend vocational guidance services for young people and improve vocational guidance at school.

Young people between the ages of 7 and 26 can seek guidance not only from information and counselling centres but also from open youth centres. A working group has established guidelines on the quality of services to be offered in these centres, the qualifications required of staff and the standard of the materials and equipment to be used.

Since 2004, all schools providing a general education have been required to offer career guidance. 10 of Estonia's 23 vocational training institutions have their own guidance counsellor. Most schools also run guidance activities such as visits to companies and special vocational events.

In reply to the Committee, 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

In 2006, there were 25 information and counselling centres employing 62 counsellors. 52,856 young people made use of these centre's services.

No distinction is made between spending on education as a whole and spending on vocational guidance. In 2005 and 2006, the Ministry of Education and Research allocated 2,682 million Estonian kroons

(EEK) (about € 172,000) to vocational guidance provided outside schools (i.e. in information and counselling centres). In September 2005, the National Resource Centre for Guidance funded a guidance project which will be completed in June 2008 using funds from the European Union. The total budget was EEK 6.64 million (€ 424,400), 25% of which came from national funds.

With regard to staffing, the report states that in the 2005/2006 academic year, 30% of the 601 general schools appointed a person to be in charge of vocational guidance provision in the school.

*Vocational guidance in the labour market*

a. Functions, organisation and operation

Under the Labour Market Services and Benefits Act, which came into force on 1 January 2006, public vocational guidance services (which also cover career choices) are offered free of charge and systematically, on an individual or collective basis, by the national employment office and its local branches to unemployed people and people given notice of redundancy.

In its previous conclusion (Conclusions 2007), the Committee considered that the situation was not in conformity on the ground that in practice vocational guidance services were accessible only to these persons.

According to the report, there is special emphasis on guidance for young people under the age of 17, the aim being to facilitate their access to the labour market and prevent them from being unemployed and hence having to use the labour market guidance services. A European Union programme covering the period from 2007 to 2013 is intended to broaden the target group in the labour market to cover people other than unemployed persons and workers given notice of redundancy. Legislative amendments will be made as a result of this programme.

The Committee notes that there has been no change in the situation. It will investigate the impact of this new programme the next time it assesses the situation. It considers therefore that, for the present reference period, the situation is still not in conformity with Article 9 of the Revised Charter.

b. Expenditure, staffing and number of beneficiaries

A budget of EEK 1.9 million (about € 122,000) was allocated for vocational guidance counsellors and related general administrative costs in 2005. In 2006, this budget was increased to EEK 3 million (about € 192,000).

During the reference period, there were 22 guidance counsellors in the labour market system, all of whom had qualifications in psychology and social work.

The number of beneficiaries was 9,494 in 2005 and 8,356 in 2006. According to the report, since the beneficiaries of labour market guidance services are unemployed persons and workers given notice of redundancy, this decrease is accounted for by a rise in the employment rate and a fall in the unemployment rate.

*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 to be in conformity.

*Conclusion*

The Committee considers that the situation is not in conformity with Article 9 of the Revised Charter on the ground that vocational guidance services in the labour market are accessible only to unemployed persons and workers given notice of redundancy.

## 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 Estonia's report.

*Secondary and higher education*

In its previous Conclusion (Conclusions 2007) the Committee took note of the reform of the public vocational education system which had started in 1997. It notes that most of the reorganisation of the network of state vocational education institutions has now been completed. There are now 47 vocational education institutions, including those privately owned.

*Measures to facilitate access to education and their effectiveness*

In its previous conclusion (Conclusions 2007) the Committee took note of the measures implemented to facilitate access to education and found that the situation was in conformity with the Revised Charter. The Committee further notes that the funding for vocational education has increased 4,5 times over the past 12 years. It amounted to 0,66% of GDP in 2006. The Committee notes from Eurostat that the total spending on education amounted to 4,87% of GDP in 2005.

*Conclusion*

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

### *Paragraph 3 – Vocational training and retraining of adult workers*

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

*Employed persons*

In its previous conclusion (Conclusions 2007) the Committee took note of the organisation and functioning of vocational training for employed persons. It further notes from the report that in 2005-2007

the Estonian Unemployment Insurance Fund implemented projects on collective redundancies with the support of the EU structural funds. Their objective was to develop a system of training and retraining together with counselling services for redundant workers. In reply to the Committee's question what steps were planned to increase the participation in training programmes, the report states that the Lifelong Learning Strategy 2005-2008 was adopted and offers various measures to increase the number of people taking part in adult training. The Committee wishes to be kept informed about the implementation of this strategy and its impact on the number of employed people who receive continuing training.

*Unemployed people*

In its previous conclusion the Committee asked what types of vocational training were provided to unemployed persons. In this regard it notes from the report that in 2006 the training to increase the effectiveness of job-search was the most frequently offered field of training. Besides, five most popular areas of labour market training were computer studies, language courses (Estonian), business start-up training, sales, welding. The Committee also asked what was the reason for a very low participation in training (fewer than 10% of the unemployed). According to the report this can be explained by the fact that the unemployed require several prior support measures before being referred to the labour market training, as revealed by individual action plans which are drawn up for each unemployed person. However, within the framework of the new programming period of the European Social Fund (2007-2013) measures are foreseen with a view to increasing the participation rate. The Committee wishes to be kept informed about the implementation of these measures.
The Committee notes from Eurostat that the unemployment rate in Estonia amounted to 7,9% in 2005 and 5,9% in 2006 while the EU-15 average stood at 7,7% in 2006.

*Conclusion*

The Committee concludes that the situation in Estonia 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 Estonia’s report.

It notes from Eurostat that the long-term unemployment rate (as a share of total unemployed) amounted to 53,4% in 2005 and 48,2% in 2006, while the EU-15 average stood at 41,7% and 42,1% respectively. The Committee notes from the report that the relatively high long-term unemployment rate compared to the general low unemployment rate (5,9% in 2006) is caused partly by positive economic developments which in turn have made it easier for people with lower qualification to enter the labour market but did not affect the long-term unemployed. Secondly, it is caused by an increase in unemployment benefits and health cover for the unemployed. However, with a view to reducing long-term unemployment Estonia is planning to take measures in the framework of the 2007-2013 programme of the European Social Fund aimed at removing obstacles that prevent the long-term unemployed from re-entering the labour market. The Committee wishes to be kept informed about the implementation of these measures, in particular about the activation rate of the long-term unemployed persons who have participated in training programmes.

According to the report training for unemployed persons, including the long-term unemployed is organised on the basis of specific needs of every person. Prior experience, professional training, future expectations are mapped out in the individual action plan prepared for them and attempts are made to adapt these to the situation in the labour market as much as possible. The maximum duration of labour market training organised by the Labour Market Board is one year.

*Conclusion*

The Committee concludes that the situation in Estonia is in conformity with Article 10§4 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 Estonia's report.

According to the report, in 2006, the total number of persons with disabilities was 107,513 persons, 43,671 of whom were working age persons (aged between 16 and 64). There were 1,872 disabled children aged between 0-6 and 3,938 disabled children aged between 7-15 (i.e. a total of 5,810 disabled children) among the recipients of social benefits. It also notes from the report that in the academic year 2005/2006, there were 27,689 children with special needs. The Committee wishes to receive clarification on the actual number of persons with disabilities (children and adults) and the proportion of these persons living in institutions.

*Definition of disability*

The Committee recalls that according to the Social Benefits for Disabled Persons Act, a disability is the loss of or an abnormality in an anatomical, physiological or mental structure or function of a person, as a result of which the person needs regular personal assistance, guidance or supervision. Moderate disability is granted to a person who needs regular personal assistance or guidance outside his or her residence at least once a week; severe disability to a person who needs personal assistance, guidance or supervision in every twenty-four hour period; and profound disability to a person who needs personal assistance, guidance or supervision twenty-four hours a day. Pursuant to Section 2 of the above mentioned Act, three parameters are considered when determining whether a person is disabled and what the degree of the disability is: the functions and structure of the body, the individual operational capacity and the participation of the person in community life.

The Committee notes from the report that in 2006, the Estonian Chamber of Disabled People prepared a 64-hour training programme for local government and education specialists (a total of 50 people) to inform them about different types of disabilities, the needs and

problems of disabled students and to improve the knowledge of social workers and teachers about disabilities. The project was launched in 2007. The Committee asks the next report to inform it about the impact of this project on the education and training of persons with disabilities.

*Anti-discrimination legislation*

In its previous conclusions (Conclusions 2005 and 2007), the Committee asked whether the 1992 Education Act and the Basic Schools and Upper Secondary Schools Act explicitly prohibit discrimination on the ground of disability.

In reply, the report highlights that the Constitution (Article 12) bans discrimination in all spheres of activities which are regulated and protected by the state. There are no detailed legal provisions to address cases of discrimination on grounds other than sex and/or in fields other than employment. In this regard, the Committee notes from another source[1] that a draft Law on Equal Treatment was submitted to Parliament in 2007 (outside the reference period) and that this will ban discrimination on any ground in almost all spheres of social life.

The Committee reiterates that it considers the existence of non-discrimination legislation to be an important tool for the advancement of the inclusion of children with disabilities into general or main-stream 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 (Conclusions 2007, General Introduction, Statement of Interpretation on Article 15§1).

The Committee asks the next report to indicate whether the new Law on Equal Treatment has been adopted and if it includes provisions

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[1] Estonia 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 Vadim Poleshchuk 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

explicitly protecting persons with disabilities against discrimination in education and training. Meanwhile, the Committee considers that the anti-discrimination legislation in the field of education and training is inadequate.

The Committee takes note of the information provided on the powers of the Chancellor of Justice. It reiterates that it wishes to be informed about any relevant case law on discrimination based on disability relating to education and training.

*Education*

The Committee refers to its previous conclusions (see Conclusions 2005 and 2007), for a description of the legal framework and institutional set-up of education in Estonia. It notes from the report that in the 2005-2006 academic year, 21,406 children with special needs studied in ordinary schools and 6,283 in special schools. The Committee also notes that there are 49 special schools in Estonia.

In its previous conclusion (Conclusions 2007), the Committee noted from another source[1] that children with intellectual disabilities were considered to be mostly segregated in special schools. It therefore asked the Government how the quality of education, sufficient resources, and monitoring is ensured in special institutions, recalling that Article 15§1 requires the inclusion of children with disabilities into general or mainstream educational schemes.

In reply to the Committee, the report reiterates that educational policy in Estonia focuses on inclusion. Every child, including with mental disabilities, has the right to study in a school near to his/her home. The school is obliged to admit the child, create the conditions for the child to study according to his or her abilities and apply support systems if necessary. The report specifies that if the school is unable to create such an environment, it must refer the child to a regular school that complies with the necessary requirements, but it may also refer him/her to a special school. The report then points out that the number of mentally disabled students in special schools is decreasing (2,674 in 2005 and 2,659 in 2006) and the number of

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

students integrated into regular classes is increasing (450 in 2005 and 2006, whilst they were 376 in 2004), and teaching children in regular schools in separate groups is also on the rise (460 in 2005 and 2006, whilst they were 397 in 2004). The implementation of support systems, creation of individual study programmes for students with special needs and the quality of teaching in mainstream schools and in schools for children with special needs is regularly inspected.

*Vocational training*

The Committee refers to its previous conclusion as regards the description of the vocational training system, as well as all types of higher education including university education, which it considered to be in conformity with Article 15§1 of the Revised Charter. However, the Committee had asked whether the Vocational Educational Institutions Act explicitly prohibits discrimination on the basis of disability. The report replies by referring to the Constitution. In this regard, the Committee reiterates its above comments on the draft Equal Treatment Law under preparation.

The Committee notes the issuing of Regulation no. 25 on the Conditions and Procedure for Persons with Special Needs Studying in Vocational Educational Institutions, by the Minister of Education and Research in August 2006, which stipulates that activities supporting individual development must be guaranteed to students with special needs acquiring vocational education. The Regulation specifies that individual study plans must be prepared and implemented, regular appraisals must be conducted and transition into working life in cooperation with a company and, if necessary, access to the services of support staff must be organised. The Committee asks the next report to describe the impact of this Regulation on the opportunities for persons with disabilities to acquire vocational education. In this regard, the Committee has noted from the report that in 2005-2006, only 2% of all vocational students were students with special needs. Those studying in ordinary vocational schools were between 600 and 700 (the number of graduates in 2005 was 203 whilst 479 continued their studies); whilst 131 students with disabilities studied at the Astangu Vocational Rehabilitation Centre (the only special vocational rehabilitation institution in Estonia), with 26 students graduating from

the diagnostic training groups and 47 from vocational training groups.

The Committee also notes that in 2005 56 employed persons with disabilities benefited of a state subsidy (9,600 EEK for three years) to continue training for professional reasons (in 2006, the same subsidy was granted to 51 employed persons with disabilities); whilst a rehabilitation allowance (paid for the active rehabilitation of persons with disabilities of 16 to 65 years of age in rehabilitation institutions) was paid to 1,848 persons with disabilities in 2005 (in 2004 the same allowance had been paid to 1,815 persons with disabilities).

*Conclusion*

The Committee concludes that the situation in Estonia is not in conformity with Article 15§1 of the Revised Charter on the ground that the anti-discrimination legislation covering education and training for persons with disabilities is inadequate.

*Paragraph 2 – Employment of persons with disabilities*

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

In 2006, the total number of persons with disabilities was 107,513 persons, 43,671 of whom were working age persons (aged between 16 and 64). The report specifies that detailed statistical data can only be given about unemployed persons registered with the Labour Market Board and indicates that there were 4,023 unemployed persons with disabilities in 2006, among whom 758 persons found work in 2006. The report also states that approximately 17% of all working age disabled people work, however no further details are provided in this regard.

The Committee highlights that it also needs to systematically be provided with up-to-date figures concerning the total number of persons with disabilities employed (on the open market and in sheltered employment), those benefiting from employment promotion measures and those seeking employment. In the absence of these figures, it cannot be established whether the situation is in conformity with Article 15§2.

*Anti-discrimination legislation*

The Committee refers to its previous conclusion (Conclusions 2007) for a description of the Employment Contracts Act (ECA Consolidated text 2004, Section 10), which prohibits direct and indirect discrimination in employment and access to training on the ground of, *inter alia,* disability and the Occupational Health and Safety Act, which provides that work places be adapted to be suitable for workers with disabilities.

In order to assess whether the right to non-discrimination in employment is effectively guaranteed for persons with disabilities, the Committee reiterates its previous questions concerning the implementation of the reasonable accommodation obligation as they were not sufficiently addressed in the current report, i.e. :

– How is the reasonable accommodation obligation implemented in practice?
– 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?

The Committee also reiterates that it wishes to be informed about any case law relating to discrimination on the ground of disability in the field of employment. It is particularly interested in any such cases handled by the Chancellor of Justice.

*Measures to promote employment*

The Committee refers to its previous conclusions (Conclusions 2005 and 2007) with respect to the measures to promote employment (employment services, tax concession and subsidies), which have not changed during the reference period.

The Committee notes that in 2006, 68 unemployed persons with disabilities were employed with wage subsidy, 46 unemployed persons with disabilities were recipients of business start up subsidy and 1,146 persons with disabilities attended labour market training. The report also indicates that career counselling was provided to disabled unemployed persons 870 times. Disabled unemployed persons participated in public work 49 times, in coaching for work 74

times, in work practice 239 times. However, the number of persons with disabilities benefiting from such services on these occasions is not specified in the report. It is therefore difficult to have a general picture of the situation.

Even though the Labour Market Board is offering support services and jobs are found for a certain amount of persons with disabilities, the majority of persons with disabilities have either never worked or have been out of work for a very long time. Moreover, general awareness of disabilities and the requirements and possibilities for the employment of persons with disabilities is not sufficiently high and this may explain the still modest use of services aimed at promoting their employment.

Moreover, in its previous conclusion (Conclusions 2007), the Committee had noted from another source[1] that the choice of Estonia to integrate persons with disabilities mainly through tax concession and active employment measures does not really benefit persons with intellectual disabilities, who mainly rely on social benefits and are largely excluded from the labour market. The Committee had therefore asked the Government to comment on this issue, to indicate the measures planned, as well as figures on the situation of persons with intellectual disabilities.

According to the report, under the Social Welfare Act, adults with special mental needs may use an assisted working service which is financed from the state budget. The total number of people with mental disabilities who used this service in 2005 was 533. Institutions offering employment to people with special mental needs are supported by the state and three such institutions also receive support from local governments.

As mentioned above, since necessary information to have an overall picture of the situation is still lacking (i.e. the total number of persons with disabilities employed on the ordinary market, the measures taken to enable the integration of persons with disabilities into the ordinary labour market and the general rate of progress into it from

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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 Estonia, 2005.

sheltered employment), the Committee finds that nothing shows that the situation is in conformity with Article 15§2.

As concerns sheltered employment, the Committee notes from the report that during the reference period, the total number of people employed in sheltered work centres were 416 persons. While noting from the report that the organisation representing persons with disabilities interests also in sheltered employment facilities is the Estonian Chamber of Disabled People, the Committee reiterates that it wants to know the status and level of pay of these employees and recalls that disabled people working where production is the main activity must enjoy the usual benefits of labour law. It asks again whether this is the case.

*Conclusion*

The Committee concludes that the situation in Estonia is not in conformity with Article 15§2 of the Revised Charter on the ground that it has not been established that persons with disabilities are guaranteed effective protection against discrimination in 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 Estonia's report.

*Anti-discrimination legislation and integrated approach*

In its last conclusion (Conclusions 2007), the Committee observed that there were a number of laws and regulations which governed issues such as housing, transport, telecommunications and cultural and leisure activities for persons with disabilities, but no general anti-discrimination law on disability explicitly covering these matters.

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 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 Parliament "Riigikogu" is currently examining a bill on equal treatment, whose aim is to ensure that people with disabilities are protected against discrimination. The Committee asks for the next report to contain information on this bill and asks whether it applies to the areas covered by Article 15§3. Pending this information, it considers that the situation in Estonia is not in conformity with the Revised Charter because there is no anti-discrimination legislation to protect persons with disabilities which explicitly covered the fields of housing, transport, telecommunications and cultural and leisure activities.

In reply to the question on the integrated planning of policies for the disabled, the report states that the Government takes measures to promote equal opportunities for people with disabilities and involves these people in decision-making with a view to making them financially independent and fully integrated into society. The Committee asks whether integrated programming is applied by all authorities involved in the implementation of the policy for persons with disabilities.

*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*

The Committee notes that there has been no change in the situation which it previously considered (Conclusions 2007) to be in conformity.

*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

The Government has a strategy for 2005 to 2007 and an "Information Society Development Plan for 2013" which is intended to make information technology accessible to all people with disabilities. The aim of the KülaTee3 project is to make access to the Internet easier for the disabled.

Mobility and transport

Under the Public Transport Act, people with disabilities, their helpers and their guide dogs may use public transport free of charge. On buses there are special places for wheelchairs and reserved seats for people with disabilities. In addition, more buses with low floors were brought into service during the reference period.

Under the transport development plan for 2006 to 2013 access to rail transport is to be improved by purchasing new coaches and renovating access ramps. The Committee asks for the next report to describe the progress made as a result of these measures.

With regard to air transport, special measures (involving access ramps, lifts and wheelchairs) have been introduced to improve disabled access at Tallinn airport. Similar measures have been taken at other airports.

Housing

The Estonian Housing Economy Development Plan 2008-2013 provides technical guidelines for the conversion of housing to guarantee access to people with physical disabilities. The state supports local governments, co-operatives and associations wishing to convert housing.

Culture and leisure

According to the report, measures were taken to improve access for people with disabilities to museums, theatres and libraries. The Ministry of Culture takes account of the standards that apply in Estonia when new public buildings are built or converted for cultural or leisure purposes.

*Conclusion*

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

**Article 20 – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on grounds of sex**

The Committee notes the information provided in Estonia's report.

*Equal Rights*

There has bee no significant change to the legislation on gender equality during the reface period. However the Penal Code was amended in order to make gender discrimination a criminal offence punishable by a fine.

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).

The Committee previously requested information on the law concerning equal pay. The amendment made to the Wages Act on 16 May 2001 stipulates the principle of equal pay for male and female workers for the same or equal work (§51). Pursuant to the Act, the establishment of different wage conditions for the same or equal work for employees of different sexes is prohibited. At the request of an employee, the employer is required to prove that the employer has adhered to the principle of equal pay and that any preferences given were based on objective circumstances not connected to a person's sex. The Act gives employees the right to request explanations concerning the basis for calculation of wages. An employee also has the right to demand equal payment for the same or equal work and the compensation of damages caused by a violation of the principle of equal remuneration. Upon the determination of compensation, the duration, extent and nature of unequal remuneration shall be taken into consideration.

The Act also stipulates that upon hiring, employers are required to inform employees of the regulation of equal remuneration by law. Clause 6(2)3) of the Gender Equality Act stipulates that the activities of an employer shall be deemed to be discriminatory if the employer establishes conditions for remuneration or other conditions which are less favourable regarding an employee or employees of one sex compared with an employee or employees of the other sex doing the same or equivalent work. The other conditions mentioned in this provision mean different benefits associated with working that

employees receive from the employer in association with working for them.

Pursuant to Subsection 7(2) of the Act, within fifteen days of submission of an application the employer is required to provide a written explanation concerning his or her activities to the person who believes that he or she has been discriminated against with respect to remuneration on the basis of his or her sex. Pursuant to Subsection 3 of the same Section, an employee has the right to demand that the employer explain the basis for calculation of salaries and obtain other necessary information on the basis of which it is possible to decide whether discrimination specified in clause 6 (2) 3) of this Act has occurred. Subsection 13(1) of the Act stipulates that upon violation of the principle of equal remuneration, the injured party may demand compensation and termination of the harmful activity. Subsection 13(2) says that the injured party may demand that a reasonable amount of money be paid to the party as compensation for non-patrimonial damage caused by the violation. The Gender Equality Act also stipulates that upon determination of the amount of compensation, a court shall take into account, inter alia, the scope, duration and nature of the discrimination. A court shall also take into account whether the violator has eliminated the discriminating circumstances or not. Pursuant to Section 14, a claim for damages expires within one year of the date when the injured party becomes aware or should have become aware of the damage caused.

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.

As regards compensation the Committee had previously asked whether there were upper limits to the amount of compensation that could be awarded in sex discrimination cases. The report states that under the Gender Equality Act in cases of termination of employment due to reasons connected with gender there are no upper limits to the amount of compensation that may be awarded. The Committee

asks whether this is the case in other cases of discrimination on grounds of sex.

The Committee previously asked for information on how gender equality is guaranteed in the social security system. Form the information provided in the report it appears that in access to health care and unemployment benefits there is no discrimination on grounds of gender and measures have been taken to ensure equality in access to family benefits and within the pension system. The pensionable age of women will gradually be aligned with that of men throughout a transition period which end in 2015.

*Specific protection measures*

The Committee previously noted that there existed a list of activities regarded as particularly dangerous for women's health and therefore prohibited to them, however it asked whether this list was still in force. The current report states that the list was during the reference period still valid however the Gender Equality Commissioner had received complaints about the effects of the list on women's employment. She made recommendations to the complainants to use the Gender Equality Act in resolving their disputes. The list will be repealed by the new Employment Contract Act which is currently being drafted.

*Position of women in employment and training*

The female employment rate in 2005 was 59%, the corresponding male rate was 67.4%. According to the report statistical studies show that the employment rate of women has increased faster in recent years and the unemployment rate was in 2005 7.1% for women and 8.8% for men falling to 5.6% for women and 6.2% for men in 2006. Women continue to make up the majority of both vocational and higher education students.

The gender pay gap which the Committee previously considered to be significant persists, with women's average hourly gross wages being 74.6% of men's in 2005. The Committee notes that the gap seems to be significantly above the EU average and asks to be kept informed of all developments in the situation.

*Measures to promote equal opportunities*

A project 'Equality between Men and Women' -*Principle and Goal for Effective and Sustainable Enterprises* will be carried out in 2007-2008 in order to improve awareness in the private sector of gender equality in companies with respect to legal provisions, policies, means and best practice. The project includes the following activities:

– preparation of a survey to measure the knowledge of employers about gender equality, their attitude to the subject and implementation of gender equality legislation in the private sector;
– preparation of an overview of the guidelines, methods and tools used for implementation of the principle of equal treatment of men and women and promotion of gender quality in the private sector in EU Member States;
– development of guidelines for employers in the private sector in Estonia for development of bases for wage calculation and assessment of the value of work in order to eliminate the gender pay gap;
– adoption of measures to increase awareness in the private sector of the relevant legal provisions and improve their knowledge and skills in the use of tools and methods for the promotion of gender equality;
– creation of a network of private sector employers and interest groups for the exchange of information, experience and best practice in the promotion of gender equality.

The report provided information on other projects designed to promote gender equality; such as awareness raising of the general public, supporting women in the labour market, motivating women to start their own businesses etc.

*Conclusion*

The Committee concludes that the situation in Estonia 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 Estonia's report.

*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 Revised Charter.

*Obligation to provide a valid reason for termination of employment*

The Committee refers to the assessment of the situation in Estonia as regards the valid reasons for termination of employment in its previous conclusions (Conclusions 2005 and 2007).

In reply to the Committee's question as regards termination of an employment contract on the grounds of age, the report states that on 4 March 2006 the Employment Contracts Act Amendment Act entered into force which repealed the provisions of the Employment Contracts Act allowing an employer to dismiss an employee when the latter has turned 65. The report confirms that as a result it is no longer possible for employers to terminate employment contracts on the basis of the employee's age. This also applies to employees working in the public service on the basis of employment contracts. The Committee considers the situation to be in conformity with the Revised Charter in this respect.

*Prohibited dismissals*

The Committee examined the situation as regards dismissals prohibited under Estonian 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 under the Employment Contract Act and the Law of Obligations Act is in conformity with Article 24 of the Revised Charter.

*Conclusion*

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

**Article 25 – The 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 Estonia's report.

It points out that until 31 December 2002, workers' claims in the event of the insolvency of their employer were covered by a guarantee fund, which was financed by the state budget. In reply to the Committee, the report confirms that this fund has been replaced by the unemployment insurance fund, which has been the main source for the settlement of employees' claims since 1 January 2003.

The Committee notes that a company is considered insolvent when it has been declared bankrupt or bankruptcy proceedings initiated against it have been terminated before any such declaration can be made, as a result, in particular, of insufficient assets to warrant the continuation of proceedings, or where another competent authority of a member country of the European Economic Area has declared the company insolvent in accordance with Regulation 1346/2000/EC. Declarations of bankruptcy and terminations of bankruptcy proceedings take the form of judicial decisions which the trustee in bankruptcy must present to the unemployment insurance fund when making the claim for reimbursement of the sums owed to employees.

The Committee infers from this information that according to Estonian legislation the notion of makes insolvency is broader than that of bankruptcy and that claims are also protected where no official declaration of insolvency (or bankruptcy) is made. It asks for confirmation of this interpretation.

The Committee notes that the unemployment insurance fund is required to pay workers all salaries and payments owed in respect of leave which were not paid before the employer was declared insolvent (or the bankruptcy proceedings were terminated) together with any compensation not paid when the employment contract was terminated. Payable amounts can be up to three times the average monthly remuneration of the person concerned and may not exceed an amount equivalent to three times' Estonia's average monthly wage. The Committee notes that this was 7,827 Estonian kroons (EEK, which is approximately € 465) in 2004, EEK 8,073 (about

€ 516) in 2005 and EEK 9,407 (approximately € 601) in 2006 respectively.

It considers that the guaranteed amounts are sufficient with regard to Article 25 of the Revised Charter. The Committee also takes note that in 2007, outside the reference period, new legislation came into force setting separate limits for each different type of sum to be reimbursed (wages, leave and allowances).

According to the report, all workers are protected by the fund except members of the company's management board and employees working on the basis of service contracts. The latter may request reimbursement of any wages owed to them in the course of the bankruptcy proceedings in accordance with the general provisions of bankruptcy law. The Committee asks for the next report to explain exactly what is meant by a service contract. In this connection, it points out that 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 report gives the number of workers who benefited from the guarantee system during the reference period (6,303) but fails to specify what percentage of claims are satisfied. The Committee therefore asks again for an estimate of the overall percentage of workers' claims which are satisfied through the guarantee system.

Lastly, it notes that during the reference period, the average time that elapsed between the filing of claims and the payment of any sums owed was fifteen days. It considers this a reasonable waiting time.

*Conclusion*

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

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

## 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 Finland on 21 June 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 Finland submitted it on 8 February 2008. On 11 April 2008, a letter was addressed to the Government requesting supplementary information regarding Article 15§1. The Government submitted its reply on 19 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).

Finland has accepted all these articles.

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

The present chapter on Finland concerns 20 situations and concerns:

– 11 conclusions of conformity: Articles 1§1, 1§3, 9, 10§1, 10§4, 15§1, 15§2, 18§2, 18§4, 20 and 25;
– 5 conclusions of non-conformity: Articles 1§2, 15§3, 18§1, 18§3 and 24.

In respect of the 4 other situations concerning Articles 1§4, 10§2, 10§3, 10§5 and 15§1, 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 from Finland 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 – The right to work

*Paragraph 1 – Policy of full employment*

The Committee takes notes of the information provided in Finland's report.

*Employment situation*

The Committee notes from Eurostat that there was fairly sustained growth in Finland (5% in 2006, compared with 3.7% in 2004).

The employment rate continued its upward trend, from 67.6% in 2004 to 69.3% in 2006. Women also benefited from this advance (67.3% in 2006).

All the unemployment indicators fell during the reference period. The unemployment rate fell significantly, from 8.8% in 2004 to 7.7% in 2006 (the EU-15 average was 7.7% in 2006), while female unemployment declined from 8.9% in 2004 to 8.1% in 2006 (the EU-15 average was 8.5% in 2006). The rate among young persons (15-24) was 9.7% in 2006, compared with 10.3% in 2004, and thus below the EU-15 average (15.7 % in 2006).

Long-term unemployment as a percentage of total unemployment also rose slightly, from 24% in 2004 to 25.2% in 2006, but is still below the EU-15 average (42.1% in 2006).

*Employment policy*

Long-term unemployed, women, young persons and persons with disabilities were mainly concerned by active measures during the reference period.

Steps have been taken to ensure that the long-term unemployed benefit from activation measures throughout their period of inactivity.

As regards women, the main measures were linked to the equal opportunities in the framework of the Government's action plan for gender equality 2004-2007. These are particularly concerned with reconciling work and private life and equal pay.

As to disabled persons, they have mainly benefited from financial aids, particularly through training or wage subsidies. During the

reference period, an average of 10,000 disabled job seekers benefited from active measures.

Immigrants can be entitled to a labour market subsidy and/or an income allowance. A total of 10,600 immigrants received an integration allowance in 2005, and 3,506 had plans prepared for the first time during the year.

In reply to the Committee's question, the report states that the new project on cultural diversity in the workplace aims to develop good practices with regard to the recruitment of immigrant workers.

The overall project comprised some 25 individual activities in various sectors during the reference period. A total of 8,912 immigrant workers benefited from active measures in 2005, an activation rate of 61.8%, including 5,817 who received training. According to the report, the immigration policy programme to promote work-related immigration was only launched in 2006. The Committee asks to be informed of the results.

There have been various projects to help Roma, Sámi and other ethnic minorities to enter the labour market. The Committee asks to be informed of the results.

It notes that, according to Eurostat, the total number of beneficiaries of active measures rose during the reference period from 96,696 in 2005 to 98,624 in 2006, including 53,945 women. The activation rate among the unemployed was about 48.3% in 2006.

Finally, the Committee notes that total spending on active and passive employment policy fell during the reference period, from 2.9% of GDP in 2004 to 2.5% in 2005. Spending on active measures represented 0.7% of GDP in 2005, the same as in 2004. These figures are still above those of the EU-15 average (2.2% and 0.5% respectively in 2005).

*Conclusion*

The Committee concludes that the situation in Finland 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 notes of the information provided in Finland'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.

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 Finland's legislation prohibiting discrimination based on disability under this provision. Similarly, for states such as Finland 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 Finland appears in Conclusions 2006.

Although the courts have had an opportunity to interpret the notion of indirect discrimination the report says that there is no established case-law because there has so far been no ruling from the upper courts. The Committee asks to be informed when such an interpretation is forthcoming.

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 2006).

Compensation may be awarded to the victims of discrimination for non-pecuniary damage but it is limited to a maximum of € 15,000. Larger sums may be awarded if warranted by the facts of the case, the duration and gravity of the discrimination or other circumstances.

If discrimination has caused material loss there may be liability for damages under the civil liability legislation, if intention or negligence can be established. The amount of damages then depends on the detriment suffered with no pre-determined ceiling. Under the contracts of employment legislation employers are responsible for detriment suffered by employees. Employers must pay damages if they are in breach of their obligations specified in the aforementioned legislation, the employment contract, any relevant collective agreements or elsewhere in labour legislation, particularly in the case of unfair dismissal. The level of compensation depends on the salary earned but may not exceed the equivalent of 24 months' salary. The situation is therefore not in conformity with the Revised Charter in this respect.

The occupational safety and health authorities are responsible for supervising compliance with the 2004 non-discrimination legislation in respect of employment relationships and the public service. The ombudsman for minorities and the national discrimination tribunal are responsible for supervising compliance with the non-discrimination legislation in respect of discrimination based on ethnic origin.

The Committee notes that the courts, the ombudsman for minorities, other authorities and associations may request a statement from the discrimination tribunal on the application of the non-discrimination act in cases of ethnic discrimination, provided that the case does not relate to an employment or civil service relationship. The Committee asks whether associations, organisations or other legal persons that, in accordance with criteria in national legislation, have a legitimate interest in securing compliance 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 relevant legislation in circumstances other than ethnic discrimination.

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 Parties 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 posts 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).

Although there is no nationality requirement for crew members, the maritime legislation specifies that only Finnish citizens may serve as masters of Finnish vessels. In its last conclusion, the Committee found that masters of vessels might have to exercise public powers in certain circumstances and that this restriction might therefore be justified by Article G of the Revised Charter. Nevertheless before reaching a conclusion it asked for further information on the nature of masters' powers and duties and whether these restrictions applied to masters in charge of any ship or the ship had to fulfil certain criteria. According the report, the Maritime Act is currently being amended, which would enable nationals of European Union or European Economic Area states to be masters of Finnish vessels, other than those of the Finnish defence forces and the border guard. The Committee therefore asks for a detailed description in the next report of the situation in both the merchant and naval fleets, after the new legislation has been enacted.

2. Prohibition of forced labour

*Prison work*

The Committee notes the information supplied in previous reports. To cast further light on the situation, 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

*Service required to replace military service*

Under the Military Service Act the length of military service is 180, 270 or 362 days. The duration of unarmed military service is 330 days and of alternative civilian service 395 days.

In its previous conclusion (Conclusions XVII-1), the Committee found that the situation was not compatible with the Revised Charter on the grounds that the length of alternative service was more than double the length of compulsory service performed by the majority of conscripts, since at that time 64.2% of conscripts performed 180 days of military service. In its previous conclusion (Conclusions 2006), it noted that the majority of conscripts (52.3%) served at least 270 days and 47.7% served 180 days. The Committee found that the situation had altered, but only slightly, and that the length of civilian service remained more than double the minimum period of military service undertaken by almost half of all conscripts.

It now notes from the report that there have been no changes in the situation it previously considered not to be in conformity. It therefore finds that the length of alternative civilian service remains a disproportionate restriction on workers' right to earn a living in an occupation freely entered upon. Admittedly, recognised conscientious objectors are in a better position than they would be in countries that do not grant them special status and 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.

*Privacy at work*

The Committee asks for information to enable it to determine to what extent 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).

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

The Committee considers that in general the conditions to which the payment of unemployment benefits is subjected, including any obligations to take up offered employment, should be assessed under Article 12§1 of the Charter (or Article 12§3 in the case of new developments). However, in certain cases and under certain circumstances the loss of unemployment benefits on grounds of refusal to accept offered employment could amount, indirectly, to a restriction on the freedom to work and as such the situation would be assessed under Article 1§2. (See General introduction to Conclusions 2008, §10)

The Committee notes that the system of unemployment benefits was altered in 2006 to increase unemployed persons' participation in the labour market. Persons who have received unemployment allowance for a certain time lose their entitlement if they refuse a job offer or an active measure. According to figures in the report, the reform has already led to a fall in the number of recipients of long-term unemployment allowances. The Committee wishes to know under what conditions refusal may be accepted and whether there is any possibility of appeal to an independent body.

*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 a 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 Finland is not in conformity with Article 1§2 of the Revised Charter on the grounds that:

– the law establishes a ceiling on the compensation payable in cases of unlawful discriminatory dismissal;
– the length of alternative civilian service constitutes a disproportionate restriction on the right to earn a living in an occupation freely entered upon.

*Paragraph 3 – Free Placement Services*

The Committee takes notes of the information provided in Finland's report.

The report says that the number of vacancies notified to the employment services rose from 344,800 in 2004 to 488,545 in 2006, an increase of 42%.

At the same time, according to the report there was a placement rate of 91% in 2006, much higher than the 41% of the previous reference period. According to the last report, the fall in the number of placements (during the reference period 2003-2004) made by the employment services was linked to changes in job-seeking practices, particularly with the introduction of electronic applications.

The Committee asks for detailed figures in the next report on the total number of public employment offices, and the total staffing of these services.

*Conclusion*

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

*Paragraph 4 – Vocational guidance, training and rehabilitation*

The Committee takes notes of the information provided in Finland's report.

As Finland 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.

In these conclusions, the Committee found that the situation with regard to vocational guidance (Article 9) and vocational education and training of persons with disabilities (Article 15§1) was in conformity with the Revised Charter.

However, it deferred its conclusion on vocational training and retraining for workers (Article 10§3) and vocational education and training of persons with disabilities (Article 15§1) for lack of information.

*Conclusion*

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

**Article 9 – The right to vocational guidance**

The Committee takes notes of the information provided in Finland's report.

As Finland has accepted Article 15 of the Revised Charter, measures concerning vocational guidance of people with disabilities are treated under that provision.

*Vocational guidance in the education system*

a. Responsibilities, organisation and functioning

In 2006, the Ministry of Education launched a vocational-guidance project, JOPO, aimed at encouraging young people to continue their studies after compulsory schooling. The project involves co-operation between a number of bodies, in particular schools, municipalities, and vocational training authorities and institutions. The project is due to run until 2011. The Committee requests that the next report provide information about the project's results.

The CHANCES project seeks to develop guidance and advice services and prevent exclusion of young people from the labour market. The project will put forward new training models and good practices which can be implemented at national level. The Committee likewise requests information about the project's results.

In reply to the Committee's question about the results achieved by the project which the National Education Board launched in 2003 to improve counselling services in basic education and upper secondary education, the report states that 97.6% of those who complete compulsory schooling and receive such counselling continue their studies.

b. Expenditure, staff numbers and beneficiary numbers

The report states that financing of vocational guidance is included in the financing of education and training and that there are no detailed figures for guidance. The Committee requests that the next report provide up-to-date figures for expenditure on vocational guidance in the education system. It requests that this information feature systematically in each report.

In 2005 there were 923 guidance counsellors working in general education (primary and secondary) and 134 guidance counsellors in

the vocational-training sector. In 2005 the numbers under age 25 receiving counselling came to 11,413 and in 2006 to 11,056.

*Vocational counselling in the labour market*

a. Responsibilities, organisation and functioning

In May 2006 the Ministry of Education and the Ministry of Labour jointly introduced an action plan (due to run until 2012) particularly aimed at developing vocational counselling for adults. The target is to ensure that by the end of 2008 citizens have access to information and advice services on adult education and training. The Committee requests that the next report provide information about the action plan's results.

In its previous conclusion (Conclusions 2007) the Committee noted that some counselling services were particularly aimed at the unemployed and that training programmes were provided for the staff operating the services. In the absence of any information in the report, the Committee requests more information on the subject.

b. Expenditure, staff numbers and beneficiary numbers

The report states that financing of vocational guidance is included in the financing of education and training and that there are no detailed figures for counselling. The Committee requests that the next report provide up-to-date figures for expenditure on vocational counselling in the labour market. It requests that this information feature systematically in each report.

In 2006 there were 2,700 counsellors working in employment agencies. They have psychology qualifications. In 2005 the numbers aged over 25 receiving counselling came to 20,561 and in 2006 to 20,406.

*Dissemination of information*

In addition to electronic advice services (the AVO and A-URA portals) mentioned in the previous conclusion, the Ministry of Labour introduced a new Internet site, Ammattinetti, in 2006. It provides information about the labour market and descriptions of the different occupational sectors.

In 2005 of the Ministry of Labour introduced a national information helpline on education and training opportunities.

*Equal treatment of nationals of other States Parties*

The Committee notes that the situation which it previously found in conformity is unchanged (Conclusions XVI-2).

*Conclusion*

The Committee concludes that the situation in Finland 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 notes of the information provided in Finland's report.

It notes that the report does not reply to the questions asked in its previous conclusions (Conclusions XVI-2 and 2007). The Committee holds that if in the next report the reply is not provided to the questions listed below, there will be nothing to show that the situation in Finland is in conformity with the Revised Charter.

– Describe measures introduced to ensure that qualifications acquired in general secondary and higher education are geared towards helping students find a place in the labour market;
– State the proportion of graduates who find employment and how long it takes for them to find their first skilled job.

*Secondary and higher education*

The Committee notes from another source[1] that the student admission to higher education may be based on the grades attained in the matriculation certificate, or the results of an entrance test or a combination of both. A total of 34,058 matriculation examinations were passed in 2005.

According to Statistics Finland, a total of 176,500 students attended university education leading to a degree in 2006. The number of foreign students was 5,400. A total of 19,400 university degrees were attained in 2006. A total of 132,600 students attended polytechnic education leading to a degree in autumn 2006 and a total of 21,000 degrees were obtained at polytechnics in 2006.

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1 http://www.eurydice.org/portal/page/portal/Eurydice/ByCountryResults?countryCode=FI

Adult education provided by universities is mainly arranged by universities continuing education centres. Each university has a continuing education centre. The main purpose of continuing education is to provide an opportunity to upgrade knowledge and skills or to acquire new professional skills. In addition, the provision of skills and training based on labour policy considerations is one of the major tasks of continuing education centres.

*Measures to facilitate access to education and their effectiveness*

The Committee notes from Eurostat that Finland allocated 6,42% of its GDP to education at all levels in 2004. The Committee asks for more detailed figures on spending, such as on university education and on continuing education.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 10§1 of the Revised Charter.

*Paragraph 2 – Promotion of apprenticeship*

The Committee takes notes of the information provided in Finland's report.

The Committee notes from Finland's report that there have been no new developments in the reference period. However, the Committee notes that the report does not provide the information requested in its previous conclusions (Conclusions XVI-2 and 2007). Therefore the Committee holds that if the reply to the questions listed below is not provided in the next report, there will be nothing to show that the situation is in conformity with the Revised Charter.

– What measures have been taken to increase the number of apprentices and does the number of available places satisfy the demand?
– What is the average length of apprenticeship and the division of time between practical and theoretical training?
– How does the selection and training of trainers proceed?
– What are the rules for termination of contracts for apprentices?

The Committee notes from another source[1] that in 2004 participants in apprenticeship training totalled 18,000 in upper secondary vocation training and 29,500 in additional training (non-qualification oriented). In 2004 the total expenditure on apprenticeship training amounted to about € 129 million. The costs per student for apprenticeship training leading to upper secondary vocational qualifications (IVET) stood at about € 4,873. The state grants training compensation to employers. The amount of this compensation is agreed upon separately for each apprenticeship contract before the contract is approved.

*Conclusion*

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

*Paragraph 3 – Vocational training and training of adult workers*

The Committee takes notes of the information provided in Finland's report.

The Committee notes from Finland's report that there have been no new developments in the reference period. However, the Committee notes that the report does not provide the information requested in its previous conclusion (Conclusions 2007). Therefore the Committee reiterates its following questions:

– Is there legislation authorising individual leave for training and, of so, under what conditions and on whose initiative, how long it lasts and whether it is paid or unpaid. The Committee holds that if this information is not provided in the next report there will be nothing to establish that the situation in Finland is in conformity with the Revised Charter on this point.
– What is the total spending on continuing training both for employed and unemployed persons?
– How is the cost of vocational training shared between public bodies (central or other authorities), unemployment insurance systems, enterprises and households.

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[1] http://libserver.cedefop.europa.eu/vetelib/eu/pub/cedefop/eknowvet/2006_TO_FI.pdf

The Committee notes from Eurostat that the unemployment rate amounted to 8.4% in 2005 and 7.7% in 2006.

*Conclusion*

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

*Paragraph 4 – Long-term unemployed persons*

The Committee takes notes of the information provided in Finland's report.

The Committee notes that in 2006 around 7,280 long-term unemployed persons started labour market training. Around 12% of all unemployed participating in labour market training were the long-term unemployed. The Committee notes from Eurostat that the long-term unemployment rate amounted to 25,8% in 2005 and 25.2% in 2006.

In its previous conclusion the Committee asked for detailed information on all training measures for the long-term unemployed. In this connection the Committee notes from the report under Article 1§1 that long-term unemployed jobseekers are provided with individual activation programmes and, if necessary, long-term service packages in cooperation with the state, local authorities, the labour force service centres and other actors. The labour market subsidy system was reformed as from the beginning of 2006. In the context of the reform, the system of employment subsidy for employers was revised as well. The new system consists of a pay subsidy and other employment subsidy. The reform aims at improving the quality and effectiveness of employment by combining the subsidies with employment and training. The Committee asks what is the impact of these measures on reducing long-term unemployment.

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

*Paragraph 5 – Facilities*

The Committee takes notes of the information provided in Finland's report.

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

The Committee notes from the supplementary information provided by the Government that the Student Financial Aid Act has been amended. According to the amended version a foreign national permanently residing in Finland for the purposes other than studies is entitled to student financial aid if he/she has been granted either a continuous residence permit, or a permanent residence permit or a long-term resident's EC residence permit.

The Committee notes from another source[1] that continuous residence permit is a fixed-term permit that can be extended for a maximum of 4 years at a time. However, there is another type of a fixed-term residence permit, which is called a temporary residence permit and which can be extended for a maximum of 1 year at a time. The Committee notes that the first permit is usually granted for one year.

In its previous conclusion (Conclusions 2007) the Committee found that the situation in Finland was not in conformity with the Revised Charter because of the length of residence requirement imposed on nationals of certain States Parties, lawfully resident or regularly working in Finland, for entitlement to financial assistance for training.

In the light of the new information received, the Committee asks whether those nationals of other States Parties who have obtained a temporary residence permit are guaranteed equal treatment with regard to financial assistance for training.

*Training during working hours (Article 10§5 c)*

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

*Efficiency of training (Article 10§5 d)*

The Committee reiterates its request for more information concerning the measures to evaluate the efficiency of training.

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[1] Finnish Immigration Service

*Conclusion*

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

## 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 Finland's report and the additional information submitted by the Government on 19 May 2008 in reply to a further question addressed to it by the Committee.

According to the report, in 2005, the total number of persons with disabilities eligible for statutory disability benefit was 254,000 (entitlement to the benefit requires a substantial disability). Moreover, recipients of benefits under the Services and Assistance for the Disabled Act and the Act on Special Care for the Mentally Handicapped were 120,000.

*Non-discrimination legislation*

The Committee recalls from its previous conclusions (Conclusions XVI-2 and 2007) that the Constitution guarantees equal treatment for persons with disabilities and that the 1998 Basic Education Act (Section 17) guarantees equal education to every child and in this context promotes inclusive education for children with disabilities.

In its previous conclusion, the Committee asked whether the latter act as well as the Act on Vocational Education (No. 630/1998) explicitly prohibit discrimination on the basis of disability. The report does not provide a reply to this question, however the Committee notes from another source[1] that the Non-Discrimination Act (No. 21/2004) prohibits discrimination *inter alia* on the basis of disability in access to education, all types of vocational training and retraining. The Committee asks the next report to clarify whether aspects other than access to education, vocational training and

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[1] Finland 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 Timo Makkonen 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

retraining are also explicitly covered by the non-discrimination legislation.

*Education*

As regards admission and/or transferral of students to special-needs education, the Committee had noted that the Basic Education Act provides for the possibility of lodging an appeal against the decision taken against the will of parents/carers with the state provincial office and that a further appeal against such decision could be lodged with an administrative court. The Committee had asked the report to clarify whether the victim could ask for compensation for the damage suffered as a result of discrimination, as well as information on the existing relevant case law. Since the report does not provide the corresponding information, the Committee reiterates its requests.

In relation to the issue of special-needs education, the Committee notes from the report that in 2005 the percentage of students transferred to such education increased by 7.5% compared to the previous year. It also takes note that the largest proportion of the students transferred had learning difficulties caused by emotional disturbances or social maladjustments. The report also points out that during the school year 2004-2005 more than every fifth student received part-time special needs education for the same reasons. According to the additional information provided by the Government, in 2006, little less than half of the students receiving special needs education were integrated entirely or partly in supported mainstream education. Slightly more than half studied in special groups in comprehensive schools or special institutions. In 2006 there were 176 such institutions. The amount of students in these institutions was slightly under 8,000. Compared to the year 1999 the number of students has decreased by 4,000.

The Committee reiterates its request to obtain information concerning:

– figures on mainstreaming in general upper secondary education, including an estimation of how many students have intellectual disabilities;
– information on whether general teacher training includes a module on special educational needs.

*Vocational training*

The Committee notes from the report that in 2005 vocational and career planning services were provided to 6,500 persons with disabilities, representing 20.2% of the total number of persons benefiting from such services (in 2006 the figures decreased: 5,700 persons with disabilities, representing 18.2%).

The Committee also notes from the report that vocational education may be supplemented by training try-outs aimed at giving disabled students an opportunity to orient themselves to workplaces within their fields of interest. The students' aptitudes for a particular field are studied and verified during these try-outs. The Committee wishes to receive further information on such training and its outcome.

The report points out that rehabilitative instruction and guidance is intended to prepare students with disabilities (particularly those with severe disabilities who cannot participate in education leading to a vocational upper secondary qualification) for work and independent life. Individual rehabilitation plans are prepared to help each student. Teachers providing rehabilitative instruction are supported by multiskilled support staff (in general one support person for three to five students). The Committee requests the next report to provide figures concerning such instruction (number of disabled persons attending such courses and percentage of those entering into some kind of work relationship thereafter).

Finally, in its previous conclusion the Committee recalled that under Article 10 of the Revised Charter it regards vocational training as encompassing all types of higher education including university education. It considers that this interpretation applies *mutatis mutandi* to Article 15. Not having received any information in this regard, it reiterates its question concerning access of persons with disabilities to higher education.

*Conclusion*

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

*Paragraph 2 – Employment of persons with disabilities*

The Committee takes notes of the information provided in Finland's report.

According to the report, in 2005, the total number of persons with disabilities eligible for statutory disability benefit was 254,000: 86,000 (34%) were of working age (16-65). Entitlement to the disability benefit requires a substantial disability. In addition, there are other persons who need support and services for different functions.

*Non-discrimination legislation*

The Committee refers to its previous conclusions (Conclusions 2007) for the description of the Non-Discrimination Act (No. 21/2004), which prohibits direct and indirect discrimination in employment and training on the ground of, *inter alia,* disability and reiterates its previous questions concerning the implementation of the reasonable accommodation obligation as they were not addressed in the current report, i.e. :

– How is the reasonable accommodation obligation implemented in practice?
– 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 for persons with disabilities*

As to measures in place to encourage employers to hire and keep in employment persons with disabilities, the Committee refers to its previous conclusions for their description. It recalls that it asked the next report to indicate any measures introduced to further enable the integration of persons with disabilities into the ordinary labour market and the general rate of progress into it.

In reply to the Committee, the report indicates that to improve the capacity of disabled jobseekers for work and training and to support their employment, the labour administration arranged for supportive measures, including examinations of health and working capacity, rehabilitation examinations, expert consultations, work try-outs at

working places, work and training try-outs and preparative training for working life (supported employment). The report highlights that thanks to such measures the number of disabled persons in the ordinary market increased from 42 933 in 2004 to 44 000 in 2006.

The Committee has previously recalled that people working in sheltered employment facilities where production is the main activity must enjoy the usual benefits of labour law. It asks again whether this is the case and whether trade unions are active in sheltered facilities.

*Conclusion*

The Committee concludes the situation in Finland 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 notes of the information provided in Finland's report.

*Anti-discrimination legislation and integrated approach*

In the previous conclusion (Conclusions 2007), the Committee concluded that the situation was not in conformity with the Revised Charter on the grounds that there was no anti-discrimination legislation prohibiting discrimination on grounds of disability in the areas covered by this provision. There has been no change to this situation. Therefore the Committee again concludes that the situation is not in conformity with Article 15§3 of the Revised Charter.

In 2006 the Government published a report on Finnish disability policy; the report assesses the strengths and challenges of the current policy and proposes measures to improve it. The report reiterates that Finnish disability policy is based on equality, inclusion and the right of persons with disabilities to the necessary services and support measures. The Committee asks whether this report has resulted or contributed towards the development of integrated programming.

*Measures to overcome barriers*

The National Research and development Centre for Welfare and Health (STAKES) coordinates a Design for All Network, which aims to design and promote the accessibility of all environments, in the fields of communication, the built environment, technologies and services. The Committee asks for information on the results from the development of the Design for All Networks programme.

Technical aids

In the last conclusion (*ibidem.)*, the Committee noted that services and supportive measures based on the Act on Services and Assistance for the Disabled supplement general services when these are not sufficient or suitable for a person with disabilities.

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

In 2006 legislation increased the number of interpretation hours for deaf blind persons from 180 to 360, and from 120 to 180 for others needing these services. These are free services provided by the municipalities.

Mobility and transport

The Ministry of Transport and Communication completed a project on accessibility of public transport in 2006. The Committee asks to be informed of the results of this project.

Cultural and leisure activities

In 2006 the Ministry for Education adopted a programme entitled Access to Arts and Culture for All 2006-2010, which, inter alia, aims to strengthen the access to cultural rights for persons with disabilities and promote the cultural rights of persons with disabilities. The measures include increasing funding of the cultural activities of disabled persons' communities and improving access for persons with disabilities to mainstream culture. In addition in 2007 the Ministry of Education set up a new cross expert body on improving accessibility of culture.

*Conclusion*

The Committee concludes that the situation in Finland is not in conformity with Article 15§3 of the Revised Charter on the grounds that there is no anti-discrimination legislation covering issues such as housing, transport, telecommunications and cultural and leisure activities.

**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 notes of the information provided in Finland's report.

*Foreign population and migratory flows*

It notes, from another source[1], that at 30 September 2005 there were 113,900 foreigners in Finland, equal to 2.2% of the population. The Committee also notes that in 2005 immigration for lengthy periods of residence – immigration mainly for family and humanitarian reasons – reached its highest level since 1991, with 12,700 people entering the country, mainly Russians and Estonians. These two nationalities likewise figured prominently among temporary migrants, notably those entering the country to perform seasonal work.

*Work permits*

The Committee refers to its previous conclusions (Conclusions 2007) for a detailed examination of the regulations governing employment of foreigners. In this connection it points out that, under the new Aliens Act (Law No. 301/2004), nationals of states not parties to the Agreement on the European Economic Area are required to apply for residence permit. The permits are granted on either a temporary or a continuous basis according, in particular, to the nature and duration of the work.

In its previous conclusions (ibidem) the Committee noted that some categories of residence permit gave the holder a limited right to employment. In this connection the report states that since 1 February 2006 foreigners holding a residence permit for study purposes have been allowed to carry on a full-time activity when this is either a work placement connected with their studies or work for completion of a study course. In addition, their right to carry on part-

[1] http://www.oecd.org/

time work, which before 1 February 2006 was limited to 20 hours a week, is now limited to 25 hours a week.

The Committee notes that the transition period concerning workers who are nationals of the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia or Slovakia ended on 30 April 2006. Thus nationals of these countries are no longer required to obtain a residence permit for work purposes; they are however required to register their recruitment details with the employment services[1].

*Relevant statistics*

The Committee notes that in the 2005-2006 period, whereas applications for an employed person's residence permit increased, applications for a self-employed person's permit decreased: the report states that in 2006 there were 3,838 applications for an employed-person's residence permit and 84 for a self-employed residence permit, as against 3,344 for an employed person's permit and 128 for a self-employed person's permit in 2005.

The Committee also notes that in 2006 some 2,859 employed person's residence permits were granted, which corresponds to a roughly 25% refusal rate, as compared with 2,915 permits granted and a roughly 12.5% refusal rate in 2005. It therefore notes that, in the case of employed persons, the rise in applications has been paralleled by a rise in refusal rates. The situation is different with regard to the self-employed person's residence permit: in 2006 58 self-employed person's residence permits were granted, corresponding to a refusal rate of around 30%, as against 39 granted and a refusal rate of around 68% in 2005. Thus, the Committee therefore notes that, while the number of applications for a self-employed person's residence permit is on the decrease, the proportion of self-employed person's permits granted has increased.

It points out that the assessment of the degree of liberality, and thus of the conformity with Article 18§1 of the Revised Charter, is based on figures showing the refusal rates for both first-time and permit-renewal applications (Conclusions XVII-2, Spain). Even in the absence of data for renewal applications the Committee observes that the refusal rates are very high for first-time applications, a sign

[1] http://europa.eu.int/eures.

that the existing regulations are not being applied in a spirit of liberality.

The Committee requests that the next report provide statistics, with a breakdown per country, on applications for employed person's/self-employed person's residence permits granted, refused and renewed in respect of all nationals of States Parties and not parties to the Agreement on the European Economic Area.

*Conclusion*

The Committee concludes that the situation in Finland is not in conformity with Article 18§1 of the Revised Charter because the existing regulations are not being applied in a spirit of liberality.

*Paragraph 2 – Simplifying formalities and reducing dues and taxes*

The Committee takes notes of the information provided in Finland's report.

It notes that according to the report, there have been no changes to the administrative formalities connected with the issuing of residence permits for employees and self-employed persons. For a detailed description of these formalities, the Committee refers to its previous conclusion (Conclusions 2007).

In this conclusion, it asked for additional information on the different formalities to be completed to obtain an employee's or self-employed worker's residence permit (documents required, conditions, etc.) depending on whether the application was made in Finland or the foreign worker's country of origin. Noting the lack of information about the conditions for renewal of residence permits for employees or self-employed persons, the Committee also asked for the next report to give details of the relevant legislation. It noted that the new Aliens Act had made it possible to speed up the processing of permit applications. In the absence of any detailed information in this respect, the Committee had asked the Government to provide, if possible, estimated figures on waiting times for employees' and self-employed persons' residence permits.

It notes that the report does not answer any of the above questions. The Committee consequently repeats these questions.

It notes that according to another source[1], continuous residence permits are granted initially for one year and then may be extended up to a maximum of four years. After four years of residence with a continuous residence permit, foreign workers may apply for a permanent residence permit. Temporary residence permits are granted for the duration of the employment contract and may only be extended by one year at a time.

The Committee reiterates that Article 18§2 of the Revised Charter implies that it should be possible to complete the formalities for obtaining the required residence and/or work permit both in the country of destination and in the country of origin and to obtain both residence and work permits using one and the same procedure, and that waiting times to obtain permits should be reasonable (Conclusions XVII-2, Finland and Germany). The Committee previously (Conclusions 2007) considered that Finnish legislation certainly satisfies the first two requirements, but, although it put a question on the subject in the previous conclusions, the Committee does not have enough information to assess the situation as regards waiting times. It therefore asks how long it takes in practice to process applications for residence permits for employees and self-employed persons.

The Committee emphasises that if the next report does not provide the necessary information, there will be nothing to show that the situation in Finland is in conformity with Article 18§2 of the Revised Charter.

*Chancery dues and other charges*

The Committee notes that there have been no changes in the fees charged for issuing or renewing residence permits since the last reference period – the charge is still € 175 for a first permit and € 100 for a renewal.

In reply to the Committee's question, the report states that there are no plans to reduce these charges. On the contrary, under the new Decree on the Directorate of Immigration's Service Charges, which came into force on 1 January 2007 (outside the reference period), the fee for a first permit has been increased to € 200 and the fee for

[1] http://www.migri.fi/

a renewal to € 120. The report points out, nonetheless, that these fees are based on the costs incurred by the authorities when processing permit applications but are lower than the actual cost. Furthermore, whenever the authorities increase fees, they bear in mind that they must not be excessive and that they must not be an obstacle to foreign workers entering the country.

The Committee points out that under Article 18§2 of the Revised Charter the Contracting Parties undertake to reduce or abolish chancery dues and other charges payable by foreign workers or their employers. It considers, however, that increases in chancery dues or other charges cannot be considered to be not in conformity with Article 18§2 of the Revised Charter as long as they are duly justified (for example in order to cover increased processing costs or inflation) and they are not excessive. In the present case, bearing in mind that the increase in charges is warranted by the increased costs incurred by the authorities to process applications, the Committee concludes that the situation in Finland is in conformity with Article 18§2 of the Revised Charter in this respect.

*Conclusion*

The Committee concludes that the situation in the Finland is in conformity with Article 18§2 of the Revised Charter.

*Paragraph 3 – Liberalising regulations*

The Committee takes notes of the information provided in Finland's report.

*Access to the national labour market*

The Committee notes that according to the report, the legislation on the conditions of access to employment for foreign workers remained largely unchanged during the reference period. For a detailed description of the formalities, it refers to its previous conclusion (Conclusions 2007).

The new Aliens Act improves access to the labour market for various categories of foreigners. Accordingly, persons who have obtained a permanent residence permit or hold a continuous residence permit for reasons other than work, persons issued with temporary residence permits for the purposes of humanitarian protection or

immigration on humanitarian grounds or persons with permits because of a family tie are entitled to engage in a paid occupation (Conclusions 2007, Article 18§1). Foreigners with residence permits for the purpose of studies may also engage in a gainful, full-time activity as long as it consists of a traineeship related to their studies or the preparation of a research paper (in this connection the Committee refers to its conclusion under Article 18§1). The report also states that, on completion of a degree or other qualification, foreign students may be granted new temporary residence permits so that they can look for work in Finland.

*Exercise of the right to employment*

The Committee points out that, in principle, residence permits are granted only for one or more occupational sectors. Holders may change jobs within the sector or sectors for which the permit was granted as well as changing their workplace (Conclusions 2007). Furthermore, after four years of residence with a continuous residence permit, foreign workers may apply for a permanent residence permit (in this connection the Committee refers to its conclusion under Article 18§2).

In its previous conclusion (Conclusions 2007), the Committee noted that, for specific reasons, employees' residence permits could be granted for a single employer only, and it asked what these reasons were. It also wishes to know whether and under what conditions the holders of residence permits for self-employed persons could change their sector of activity. In the absence of any information in the report, the Committee repeats these questions.

*Consequences of loss of job*

In the previous conclusions (Conclusions 2007), the Committee observed that loss of job did not entail the withdrawal of the related residence permit and foreign workers could look for a new job, provided that their residence permit is still valid. It noted, however, that permits could not be extended for the sole reason that the person concerned was looking for a job and asked whether there were any plans to liberalise this rule. The Committee also asked whether residence permits could be extended pending a court decision for foreign workers appealing against dismissal.

It notes that the report does not answer any of these questions. The Committee recalls that, in the event of loss of job, Article 18 of the Revised Charter requires extension of the validity of residence permits to provide sufficient time for a job to be found[1].

The Committee concludes that the situation in Finland is not in conformity with Article 18§3 of the Revised Charter on the grounds that the rules governing consequences of loss of job are restrictive and the report contains no information that the latter have been liberalised.

*Conclusion*

The Committee concludes that the situation in Finland is not in conformity with Article 18§3 of the Revised Charter on the grounds that it has not been established that the rules governing consequences of loss of job have been liberalised.

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

The Committee notes from Finland's report that there have been no changes in the situation it previously considered to be in conformity with the Revised Charter.

It asks for the next report to provide a complete list of practical circumstances in which Finnish citizens may be prevented from leaving the country, and their legal basis.

*Conclusion*

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

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[1] Conclusions XVII-2, Finland

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

The Committee takes notes of the information provided in Finland's report.

*Equal rights – legal framework*

The Committee previously took note of the amendments to the Act on Equality between Men and Women (amendment 232/2005), which, inter alia removed the limits on compensation payable in the event of sex discrimination. The situation previously found not in conformity with the Revised Charter has therefore been amended.

The Committee notes the amendments to the rules on parental leave, it will consider these the next time it examines Article 27.

The Committee previously asked whether it was possible in equal pay cases to make comparisons of pay and jobs outside the company directly concerned. It reiterates its request for this information

*Position of women in employment and training*

In accordance with the Action Plan for Gender Equality (2003–2007), the Government increased the percentage of women in elected bodies of state owned companies and associated companies. The objective of increasing the percentage of women was achieved only when it comes to candidates nominated by the Government.

Women account for slightly less than half of all Government staff but for only about one third of senior officials.

After the parliamentary election in spring 2007, 42% of the Members of Parliament and 12 of the 20 ministers are women.

In the private sector, women accounted for 12% of the board members of all listed companies in Finland.

The gender wage gap remained at 20% in 2006. The Committee asks how the pay gap is calculated and what percentage of this cannot be attributed to known factors such as part time employment of women or the employment of women in professional sectors with lower remuneration. It again asks for information on measures taken

to close this gap. The Committee again asks for information on measures taken to close this gap

*Measures to promote equal opportunities*

The Committee asks the next report to provide information on the most significant measures taken during the reface period to promote equal opportunities.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 20 of the Revised Charter.

**Article 24 – The right to protection in cases of termination of employment**

The Committee takes notes of the information provided in Finland's report.

*Scope*

The Committee refers to its previous conclusion on Article 24 (Conclusions 2007) where it has found that the scope of the provisions dealing with the protection against dismissals in the Employment Contracts Act is in conformity with the requirements of the Revised Charter.

*Obligation to provide a valid reason for termination of employment*

The Committee reiterates its request 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.

The Committee notes that according to Chapter 6 Section 1a of the Employment Contracts Act as amended, an employee's employment relationship is terminated without giving notice and without notice period at the end of the calendar month during which the employee becomes 68 years of age unless the employer and the employee agree to continue the employment relationship. The Committee understands that even though the said Act permits termination on this ground, 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. In this context it wishes the next report to provide information on what are the underlying legitimate aims of the aforementioned provision of the Employment Contracts Act. It

furthermore wishes to know whether dismissal of an employee having reached the age of 68 further is subject to the condition that the employee has fulfilled the conditions as set out in the relevant social security legislation for entitlement to a retirement pension. Meanwhile, the Committee reserves its position on this point.

*Prohibited dismissals*

The Committee examined the situation as regards dismissals prohibited under Finnish law in its previous conclusions (*ibid*) and found the situation to be in conformity with the Revised Charter.

*Remedies and sanctions*

The Committee noted that employees who believe they have been unlawfully dismissed may take a case before the courts and seek compensation which is limited to an amount equal to 24 months pay. It further noted in the last supervision cycle in its conclusion on Article 27§3 and Article 8§2 on Finland (Conclusions 2007) that the Employment Contracts Act does not provide for reinstatement.

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. The Committee finds the situation in Finland not to be in conformity with Article 24 of the Revised Charter in this respect.

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 Finland is not in conformity with Article 24 of the Revised Charter on the ground that the compensation for unlawful termination of employment is subject to an upper limit.

**Article 25 – The right of workers to the protection of their claims in the event of the insolvency of their employer**

The Committee takes notes of the information provided in Finland's report.

The report merely refers to the previous report and thus does not answer the questions asked by the Committee in its previous conclusion (Conclusions 2007).

The Committee recalls that protection of employees' claims in the event of the employer's insolvency is governed by the Unemployment Benefit Financing Act and the Pay Security Act. As defined by the latter, insolvency covers not only bankruptcy or inability to make payments but also situations in which, though no dispute or formal insolvency proceedings are involved, the employer is declared insolvent by the competent supervisory authority.

Claims are protected by an unemployment insurance fund established by the Unemployment Benefit Financing Act. Protection covers all claims arising from an employment relationship, including claims for holiday pay and amounts due in respect of other types of paid absence. No category of employee is excluded from it. The maximum amount which can be granted is €15,200.

In this connection the Committee wishes to know the protection period in respect of each type of protected claim and if the aforementioned ceiling is adjusted periodically. It also wishes to know the precise arrangements for financing the Unemployment Insurance Fund and requests an estimate of the overall proportion of employees' claims which is met by the fund and the average length of time between submission of claims and payment of the sums due to employees. In addition, the Committee reiterates the following question asked in its previous conclusion (Conclusions 2007):

– Does the protection system in force cover part-time employees, employees on fixed-term contracts and persons on temporary contracts?

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 25 of the Revised Charter.

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

## 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 interpretations formulated by the Committee figure in the General Introduction to the Conclusions[1].

*The Revised European Social Charter was ratified by France 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 France submitted it on 27 November 2007. Supplementary information was submitted on 13 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),
– right of workers to the protection of claims in the event of insolvency of the employer (Article 25).

France has accepted all these articles.

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 France concerns 20 situations and contains:

– 12 conclusions of conformity: Articles 1§1, 1§3, 10§1, 10§2, 10§3, 10§4, 18§2, 18§3, 18§4, 20, 24 and 25;
– 4 conclusions of non-conformity: Articles 1§2, 10§5, 15§1 and 18§1.

In respect of the 4 other situations concerning Articles 1§4, 9, 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 French 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 – The right to work

*Paragraph 1 – Policy of full employment*

The Committee takes notes of the information provided in France's report.

The Committee notes that, according to Eurostat, economic growth in France slowed during the reference period to 2% in 2006, whereas it was 2.5% in 2004.

The employment rate remained stable (63.8% in 2006), while the female employment rate increased from 58.2% in 2004 to 58.8% in 2006.

Unemployment remained stable during the reference period (9.5% in 2006), staying above the EU-15 average (7.7% in 2006). Unemployment among women decreased slightly (to 10.4% in 2006), whereas youth unemployment rose, from 7.5% in 2004 to 8.2% in 2006.

Long-term unemployment as a percentage of total unemployment also rose slightly, to 41.9% in 2006 (the EU average was 42.1% in 2006).

In reply to the Committee's question, the report states that there are no separate statistics on migrants. The Committee asks this information to be included in the next report.

It requests up-to-date information on the employment and unemployment situation of persons with disabilities.

*Employment policy*

According to the report, there was a major reform during the reference period, whose aim was to improve co-ordination between the different departments of the public employment services and provide jobseekers with high-quality assistance.

According to the report, active measures which have been taken were aimed primarily at creating jobs for all categories but focused in particular on the personal services sector. There were a total of 1,794,200 workers in this sector in 2006, which was an increase of 8%.

Profit-sharing aims to maintain financial support temporarily for people taking up work again and already entitled to benefit from the minimum income (RMI), the single parent's allowance (API) or the specific solidarity's allowance (*allocation de solidarité spécifique* (ASS).

Other measures introduced applied specifically to employment for 55 to 64 year-olds (including, in particular, improvements in working conditions and continuing training).

The Committee asks what measures have been taken to deal more specifically with young people and the long-term unemployed.

In reply to the Committee, the report states that in 2006 the average time that elapsed between persons registering as unemployed and the drafting of their career plan was about ten days. In the same year, 9.1% of jobseekers were registered by the unemployment insurance payments body, the ASSEDIC, and interviewed by the National Employment Office on the same day.

According to the report, a total of 1,622,684 jobseekers have had career plans drawn up for them since their introduction in 2006.

The Committee asks again for the average number of participants in active measures and the activation rate of unemployed persons.

It notes that total spending on active and passive employment policy declined, from 2.7% of GDP in 2004 to 2.5% of GDP in 2005. The proportion of spending on active measures remained stable (0.7% in 2005).

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in France 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 notes of the information provided in France'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).

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

As its request in previous conclusions has elicited no response, the Committee asks again for information on how the notion of discrimination on the ground of age has been interpreted, in particular whether it covers the situation of young workers and retirement ages.

According to another source[1], there are no specific rules prohibiting discrimination in access to self-employed activities. The Committee asks whether and how discrimination of this sort is prohibited in law and in practice.

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).

As its request in the previous conclusion has elicited no response, the Committee asks again for confirmation that there is no upper limit on the compensation that can be awarded for discrimination.

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[1] Report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, France, Sophie Latraverse, State of affairs up to 8 January 2007, European Network of Legal Experts in the non-discrimination field, p.34.

The Committee reiterates that the law must provide protection against dismissal or other reprisals by employers for employees who lodge complaints or bring actions in court (Conclusions XVI-1, Iceland). It has noted previously that the Labour Code explicitly provides for protection against dismissal in such cases (Conclusions 2002). However, according to another source[1], protection against other types of reprisal do not seem sufficient. The Committee asks therefore for information on this point.

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).

The Committee notes that the Maritime Labour Code was amended by a law of 7 April 2008, after the reference period, to open up the posts of captain and officers called on to replace captains temporarily to nationals of the member states of the European Union and the European Economic Area and to Swiss nationals. The Committee will examine the conformity of this new legislation when it examines the next conclusions on this provision but it already notes that nationals of some States Parties are excluded from accessing these posts.

The Civil Aviation Code requires certain members of flight crews, namely pilots and other aircrew members in charge of an aircraft registered in France, to be enrolled on a specific register, for which French nationality or the nationality of a member state of the European Union is required. Under an interministerial decree,

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[1] idem, p.5.

persons without French nationality or the nationality of another member state may now enrol under the same conditions as aircrew members who are EU nationals. The report states that, in practice, enrolment by nationals of non-member states of the European Union is automatic. Since the relevant sections of the Civil Aviation Code date from 1953, they no longer reflect the real legal situation and are due to be removed from the Code as part of the work of a codification committee assigned the task of revising France's various transport codes. The Committee asks to be informed of the outcome of this work.

*Follow-up to the collective complaint by the Syndicat national des Professions du tourisme against France (No. 6/1999)*

The Committee recalls its decision on the merits of 10 October 2000 which was based on three grounds of discrimination contrary to Article 1§2 of the Revised Charter:

i. "*Villes ou Pays d'Art et d'Histoire*": by letter dated 26 November 2001, the Government stated that the Ministry responsible for Culture had sent a letter to all the territorial entities with which a "*Villes ou Pays d'Art et d'Histoire*" agreement had been signed, informing them that they are required to employ approved "*Villes et Pays d'Art et d'Histoire*" guides/lecturers only for visits organised in the context of the agreement. The Committee considered that this measure did not bring the situation into conformity with Article 1§2 of the Revised Charter, unless objective criteria were used to determine in a highly restrictive manner which visits must imperatively be organised in the context of the agreement (Conclusions 2002). Accordingly, the Committee wished to receive information on this subject. The Committee notes that the reports submitted by France since these conclusions did not contain such information. It therefore reiterates its request.

ii. discrimination in the fee conditions: The Committee noted that the Government informed it that the Ministry responsible for Culture takes particular care that there is no discrimination in the fee conditions between groups conducted by officially approved guides and other groups, and that it will be reminding the governing bodies of the National Monuments Centre, the National Monuments Union and the museums operating as public establishments of that principle. The Committee considered that this approach would bring

the situation into conformity with Article 1§2 provided that it would be effectively put into practice. The Committee accordingly requested detailed information on the implementation of the measures announced (Conclusions 2002). The Committee notes on this item also that the reports submitted by France since these conclusions did not contain such information. It therefore reiterates its request.

iii. discrimination as regards freedom to conduct guided tours particularly at some of the principal tourist sites: the Committee notes that the French delegate told the Governmental Committee of the European Social Charter that her Government had no intention of changing the situation (see the Report of the Governmental Committee concerning Conclusions 2006, document T-SG (2007) 11, §29).

The Committee found previously that the security of property and persons referred to by the Government was a legitimate aim, but that the difference in treatment between approved lecturer guides and interpreter guides and national lecturers with a state diploma vis-à-vis access to certain sites was neither proportionate nor appropriate (*Syndicat national des Professions du Tourisme* v. France, Complaint No. 6/1999, decision on the merits of 10 October 2000, §§ 39 et seq.). In the Committee's opinion, the report does not provide enough evidence which would indicate that the situation changed for it to go back on its conclusion on this point.

The Committee concludes that the situation is still not in conformity with Article 1§2 of the Revised Charter.

*Follow-up to the collective complaint SUD Travail Affaires sociales v. France (No. 24/2004)*

The Committee points out that, in its decision of 8 November 2005 on the merits of the complaint, it found that there had been a violation of Article 1§2 of the Revised Charter as the alleviation of the burden of the proof required by Article 1§2 was not guaranteed in respect of public employees. The Committee considered that there was no evidence that French law alleviated the burden of proof in the manner required by Article 1§2.

The Committee was able to verify that the procedure applicable in discrimination cases involving civil servants, public servants without

tenure and employees of the National Employment Office (ANPE) is an inquisitorial one, as it takes place in administrative courts.

Referring to its statement of interpretation in the general introduction to Conclusions 2008, according to which "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 in inquisitorial proceedings, judges seeking evidence on which to base their opinions may ask either party further questions to clarify any evidence submitted by the plaintiffs themselves. In addition, this alleviation of the burden of proof is confirmed by section 19 of the Act of 30 December 2004 establishing the High Authority for Combating Discrimination and Promoting Equality (HALDE), which applies to civil servants as well as public servants without tenure and employees of the ANPE. The Committee concludes that this alleviation of the burden of proof such that it no longer rests entirely with the plaintiff can be considered an appropriate adjustment.

2. Prohibition of forced labour

*Prison work*

Prisoners may work for private firms inside or outside prison or for public or state bodies. Their consent is required. Conversely, it is the prison authorities' duty to take every possible step to enable prisoners who so wish to engage in an occupational activity.

Labour law does not apply *per se* to prison work. For example, there are no employment contracts. However, the code of criminal procedure does lay down the rules governing prison labour relations.

As to social cover, the general rules on employment injuries and occupational diseases apply, albeit subject to certain provisos. Similarly, the provisions of the Labour Code on occupational hygiene and safety also apply in prisons.

The Committee asks what types of work a prisoner may be obliged to perform.

*Coercion in connection with domestic work*

In the light of the judgment of the European Court of Human Rights in the Siliadin v. France case (26 July 2005), the Committee considers that the ban on forced labour in Article 1§2 of the Charter also includes domestic slavery. The Committee notes that states have positive obligations to introduce and fully enforce legal provisions that make such practices criminal offences. The Committee therefore asks for information on legal provisions to combat domestic slavery and the steps taken to apply them.

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 France is not in conformity with Article 1§2 of the Revised Charter because interpreter guides and national lecturers with a state diploma are the victims of discrimination as regards their freedom to conduct guided tours particularly at some of the principal tourist sites.

*Paragraph 3 – Free placement services*

The Committee takes notes of the information provided in France's report.

In preparation for the planned merger between the National Employment Office (ANPE) and the unemployment insurance management body, UNEDIC, an agreement was signed on 5 May 2006 with a view to fostering increased co-operation between the state, the ANPE and the UNEDIC in pursuit of three main objectives:

– simplifying procedures for jobseekers and improving follow-up through measures such as a single administrative file for each jobseeker;
– galvanising jobseeking efforts through monthly follow-up interviews from the fourth month after registration onwards and the drafting of a personalised plan;
– optimising the service offered to jobseekers and firms by making information systems more accessible.

According to the report, the number of vacancies notified to the employment services increased from 3,415,000 in 2005 to 3,500,000 in 2006. At the same time, the placement rate decreased slightly, around 88% to about 87%.

There was also a decrease of 2.2% in registrations at the National Employment Office in 2006, mainly as a result of a substantial drop in dismissals for economic reasons.

According to the report, there were a total of 824 local employment offices in 2006, along with over 1,300 specialised National Employment Office branches with various specific tasks (working within networks based on mutual agreements and other forms of partnership covering groups such as managers, young people and persons with disabilities). The Committee asks for information on the total staffing of all these employment services, and their qualifications.

The use of private employment agencies is governed in particular by the Social Cohesion Act of 18 January 2005 but it only became possible at the end of the reference period. A total of 17 companies and associations were selected by the UNEDIC through a formal procedure. Terms and conditions for the operations of such agencies were produced following a series of experiments relating to support measures for unemployed people and a Europe-wide competitive tendering procedure.

The Committee asks what percentage of the market the public employment services represent, that is placements made by the public employment services as a percentage of the total number of persons recruited on to the labour market.

*Conclusion*

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

*Paragraph 4 – Vocational guidance, training and rehabilitation*

The Committee takes notes of the information provided in France's report.

As France 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 vocational training of adult workers (Article 10§3) is in conformity with the Revised Charter.

It deferred its conclusion with regard to vocational guidance (Article 9) because of a lack of information.

As to the situation in respect of the education and training of persons with disabilities (Article 15§1), the Committee considered that the situation is not in conformity with the Revised Charter on the ground of the decision on the Collective Complaint No. 13/2003 by the International Association Autism-Europe (IAAE) against France. This decision mainly concerned the right to education of persons with autism, which is therefore not relevant under Article 1§4.

*Conclusion*

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

**Article 9 – Right to vocational guidance**

The Committee takes notes of the information provided in France's report.

As France 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

An interdepartmental guidance officer, working under the authority of the Ministers of Education and Employment, was appointed in September 2006 and is responsible for co-ordinating government action in the spheres of careers information and guidance. In the first quarter of 2007 he drew up a national strategy for the occupational guidance and integration of young people, which proposes 28 measures under the following four headings:

– ongoing personalised guidance to help all young people gain a qualification;
– active guidance in preparation for vocational higher education;
– co-ordination, assessment and improved information;
– the mobilisation and professionalisation of all potential partners.

In 2006, the Education Department's information and guidance services comprised one information and guidance centre (CIO) per training area or district, or a total of 578 CIOs and 60 annexes.

In reply to the Committee, 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

Career discovery classes (an option of three hours a week, intended to introduce pupils to various occupations) were set up in lower secondary schools at the beginning of the 2005-2006 school year and attended by 38 000 pupils. In 2006, efforts to make these classes more generally available brought the number of pupils concerned up to 68 000 and the proportion of schools to 60%.

According to the report, in 2005-2006, 1,856,142 young people and adults were given one-to-one advice and 600,000 consulted documents provided as part of the activities of the Education Department's information and guidance services. The Committee asks for the next report to provide detailed information on staffing and the number of beneficiaries of vocational guidance in the education system.

The Committee notes that education spending has been rising. The Committee asks for the next report to provide information on the amount of spending on vocational guidance in the education system.

*Vocational guidance in the labour market*

a. Functions, organisation and operation

The Committee refers to its previous conclusion (Conclusions 2007) for a general description of the guidance system.

b. Expenditure, staffing and number of beneficiaries

The Committee asks for the next report to provide detailed information on staffing and the number of beneficiaries of vocational guidance in the labour market. It also asks how much is spent on vocational guidance in the labour market.

*Dissemination of information*

Information is disseminated by various means (paper, CD-ROMs, Internet), at national and regional level, either directly through the establishments concerned or by CIOs. This information is aimed at young people, teachers, guidance counsellors and psychologists.

*Equal treatment of nationals of the other States Parties*

According to the report, nationals of other States Parties legally residing in France are deemed to be in a stable situation and have identical rights to those of French nationals, particularly with regard to vocational guidance.

*Conclusion*

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

## 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 notes of the information provided in France's report.

*Secondary and higher education*

The Committee takes note of the final report on "from university to employment" which came out on 26 October 2006 and reflects the national debate on the link between universities and employment. The Committee observes that this report establishes six priorities:

– To fight against failures at universities by providing information on the pass rates of students in disciplines chosen by them and to put in place employment, traineeship and career services at each university;
– To improve information and orientation notably in *lycées;*
– To place emphasis on professionalism by introducing an obligatory vocational module for all students at the *licence* stage which would be concentrated on foreign languages, information technologies and preparation for a job search;
– To mobilise the employment world around universities by setting up shared databases on orientation and professional placement;
– To further develop university systems through attributing funds annually to the institutions of higher education having regard to the progress made in professional placement of students.

A proposal has been put forward for each university to set up a professional placement platform which will regulate the relations of universities with employers.

*Measures to facilitate access to education and their effectiveness*

The Committee notes from the report that in 2005 € 4 billion have been spent by the civil service (*la fonction publique de l'État*) on vocational education. Funds allocated to continuing training have been stable at 3,2% of the gross salaries paid.

The Committee observes from Eurydice database[1] that in 2006-2007 there were 2,287,000 students enrolled in institutions of higher education which represents an additional 12,000 students compared with the previous year. It also notes that over 3,500 institutions, public and private, contribute to the higher education service in France, among them are 84 universities and equivalent institutions, 226 engineering schools etc.

In its previous conclusion (Conclusions 2007) the Committee noted that the nationals of other States Parties enjoyed the same rights as the French nationals in respect of access to vocational training if their situation was settled (*situation stable*). Having found no definition of the term 'settled situation', the Committee reiterates its question in this regard. It recalls that according to the Appendix to the Charter equality of treatment shall be provided to nationals of other States Parties lawfully resident or regularly working on the territory of the Party concerned with respect to access to vocational training. This implies that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. The Committee asks if this is the case in France and holds that if no information is provided in the next report, there will be nothing to show that the situation is in conformity with the Revised Charter on this point.

*Conclusion*

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

*Paragraph 2 – Apprenticeship*

The Committee takes notes of the information provided in France's report and refers to its previous conclusion (Conclusions 2007) where it found that the situation was in conformity with the Revised Charter.

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1 http://www.eurydice.org/portal/page/portal/Eurydice/ByCountryResults?countryCode=FR

Law No. 2006-396 of 31 March 2006 on 'equality of chances' according to which young people over 14 years of age can decide (with the parental agreement) to take up apprenticeship training in which they would acquire a vocational qualification leading to a diploma or a professional title (among those registered in the repertoire of vocational certifications). This type of training has two phases: phase one, during which the young person stays in school and is introduced to different professions and phase two, where the young person receives a real contract of apprenticeship. Before the age of 16 the young person may decide to quit training and go back to school. The Committee also notes that this possibility to start apprenticeship at 14 is now repealed.

The number of apprentices has been increasing from 360,000 in 2005 to 377,000 in 2006. This has been achieved by making apprenticeships more attractive through various measures such as tax credits to enterprises, additional funding from the state (€117 million in 2005 and €198 million in 2006) to further develop apprenticeship training.

In 2005 the Ministry of Education set an objective to increase the number of young people in apprenticeship training in public educational establishments by 50% before 2010. This objective has already been achieved by 2007.

In response to the question asked by the Committee in its previous conclusion on the selection and training of trainers, the report states that an apprentice is supervised by either the head of an enterprise or by one of its employees. The task of trainers is to contribute to the acquiring of competences by the apprentice necessary for obtaining a diploma. To be selected a trainer should meet the following requirements: either be already in a possession of the type of diploma sought by the apprentice and have three years of relevant professional experience, or have five years of relevant professional experience.

The Committee repeats its question on how time is divided between theory and practice and how the selection of apprentices takes place. It also asks whether there are enough apprenticeship positions for all those seeking them.

*Conclusion*

The Committee concludes that the situation in France is in conformity with Article 10§2 of the Revised Charter.

*Paragraph 3 – Vocational training and retraining of adult workers*

The Committee takes notes of the information provided in France's report.

*Employed people*

In its previous conclusion (Conclusions 2007) the Committee examined the reform of the vocational training system following the national interprofessional agreement (ANI) that was concluded in 2003 and considered that the organisation and functioning of continuing vocational training for employed people was in conformity with the Charter. It notes from the report that following the ANI 248 sectoral agreements on continuing vocational training have been concluded 2005 and 186 in 2006. It also notes that as part of the general policy of life-long learning, continuing vocational education provided by universities aims at integrating initial and continuing education to ensure their complementarity. The Committee observes that between 2003 and 2005 there has been a rising number of trainees in various vocational training courses. In 2006 more than 20,000 persons obtained the complete ministerial certification of whom 14,000 persons were granted diplomas in the vocational education field.

The Committee wishes to receive more detailed information about the overall participation rate in training of employed people and the total expenditure.

Having found no reply to its previous question (Conclusions 2003 and 2007) whether equal treatment is guaranteed to nationals of other States Parties lawfully resident or regularly working in France as regards access to continuing vocational training, the Committee holds that if this information is not provided in the next report, there will be nothing to establish that the equality of treatment is guaranteed.

*Conclusion*

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

*Paragraph 4 – Long term unemployed persons*

The Committee takes notes of the information provided in France's report.

It notes that according to the report there have been no changes to the situation which it previously found to be in conformity with the Revised Charter.

The Committee reiterates its question regarding any new programmes for the long-term unemployed that replace the SIFE and SAE programmes. It also asks again whether the equality of treatment is ensured for nationals of other States Parties lawfully resident or regularly working in France as regards access to training intended for the long-term unemployed. 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 Article 10§4 of the Revised Charter.

*Conclusion*

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

*Paragraph 5 – Facilities*

The Committee takes notes of the information provided in France's report.

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

Having found no reply to its question asked in its previous conclusions (Conclusions 2003 and 2007) about the enrolment fees and the financial assistance offered in higher education, the

Committee notes from Eurydice[1] that the amount of the enrolment fees is set each year jointly by the ministry in charge of higher education and the ministry in charge of finance. In the context of the organisation of the European higher education system (LMD), tuition fees have been revised and standardised in order to facilitate student orientation. A single fee has been introduced for each course of study – €162 for a *licence* programme, € 211 for a master's programme and € 320 for a PhD programme (2006/2007 academic year). Registration fees for private institutions are higher and range from € 1500-6000 in private engineering schools to € 5,500-7,000 in business schools. The Committee also observes from the same source that in 2005/2006 € 4,561.1 million in government funding was spent on direct financial aid for students: scholarships, loans, emergency funds etc. In 2005-2006 the number of students benefiting from grants amounted to 522,242 (i.e. 30.2% of the student population). The State notably focuses on grants awarded on the basis of social criteria, representing 95% of the total aid. The Committee also takes note of other forms of scholarships such as the merit scholarship, scholarships based on university criteria and civil service scholarships.

The Committee has previously found that the situation in France was not in conformity with Article 10§5 of the Revised Charter because equal treatment of nationals of the States Parties lawfully resident or regularly working in France was not guaranteed as regards financial assistance for education. In noted in particular that there were requirements imposed with regard to the period of residence and employment for access to scholarships granted on the basis of social criteria. In this regard the Committee takes note of the *Circulaire* No 2007-068 of 20 March 2007 and also observes from another source[2] concerning the conditions of granting of scholarships on the basis of social criteria. It notes that these scholarships are awarded to the EU nationals on condition that they have previously been employed in France or on condition that they provide evidence that one of their parents has received revenues in France**.** As regards the non-EU nationals, in order to be eligible for this scholarship, they must have

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1 http://www.eurydice.org/portal/page/portal/Eurydice/ByCountryResults?countryCode=FR

2 http://www.cnous.fr/

lived in France for two years and their 'fiscal residence' *(foyer fiscal de rattachement)* (mother or father) should be situated in France since at least two years**.** The Committee observes that the situation which it previously found not to be in conformity on this point has not changed. Therefore it reiterates its conclusion of non-conformity.

*Training during working hours (Article 10§5 c)*

The Committee notes that there have been no changes in respect to training during working hours.

*Efficiency of training (Article 10§5 d)*

The Committee again wishes to obtain detailed information about how the efficiency of the various vocational training programmes is assessed in consultation with employers' or workers' organisations.

*Conclusion*

The Committee concludes that the situation in France is not in conformity with Article 10§5 of the Revised Charter because equal treatment of nationals of other States Parties lawfully resident or regularly working in France is not guaranteed as regards access to scholarships granted on the basis of social criteria for higher 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 notes of the information provided in France's report as well as the additional information submitted on 13 October 2008.

The report indicates that during the reference period:

– it was estimated that there were 255,500 young persons (aged under 20) with disabilities (despite the Committee's request, there is no information on how many of them suffered intellectual disability);
– 151,500 young persons with disabilities were educated in mainstream schools (104,800 in primary and 46,700 in secondary);
– 76,300 disabled children were educated in special medical-social or hospital-based establishments (70,100 of whom were in special establishments, even though the latter had a total capacity of 108,000);
– about 15,000 – 20,000 disabled children of compulsory school age were not at school (a quarter of whom were awaiting a solution while the others, who apparently were severely mentally retarded, were in establishments offering educational activities designed to develop their cognitive functioning.

*Definition of disability*

The Committee observes that the Act of 11 February 2005 adopts the approach of the International Classification of Functioning, Disability and Health (ICF) and states that, for the purposes of the legislation, disability constitutes any activity limitation or restriction on participation in social life suffered by individuals in their environment as a result of a substantial, lasting or permanent change to one or more physical, sensory, mental, cognitive or psychological functions, multiple disability or activity-impairing disease.

*Anti-discrimination legislation*

The Committee notes the entry into force of Act 102/2005 of 11 February 2005 on equal rights and opportunities, participation and citizenship of persons with disabilities. The Committee observes that the new legislation provides satisfactory coverage of the subject matter of Article 15§1 of the Revised Charter.

*Education*

Under Act 102/2005 of 11 February 2005:

– Individual education in an ordinary class should be the rule. Disabled pupils are legally entitled, like any other pupil, to be registered in the school or educational establishment of their sector, which is their reference establishment.
– All pupils with disabilities (whether they attend an ordinary school or a special medical-social establishment) must have a personal education plan (PPS), as one element of their personal remedial plan, drawn up by a multidisciplinary team from the *département* disabled persons' unit (MDPH) and notified to the parents or the family's legal representative by the rights and autonomy commission of the MDPH.
– On the basis of the PPS, the rights and autonomy commission of the MDPH decides on the pupil's type of education and any aid and support that might be necessary. In the event of disagreement between parents and the commission, a qualified person is appointed to conciliate. Parents may also appeal against the commission's decisions to the same authority or to the courts.
– Whatever the place of education, each disabled pupil has a specialist teacher appointed to act as reference person. Reference persons are responsible for ensuring that personal education plans are properly applied and that relations are maintained with pupils and their parents throughout the whole period of education. They convene and chair regular meetings of the education monitoring team, which maintains contact with each child and the parents and is composed of all those (including persons outside the education department, concerned with the PPS. The monitoring team assesses the PPS and its progress at least once a year and may suggest modifications to the multidisciplinary team.

The report states that the new arrangements were introduced at the start of the school year in 2006 (i.e. at the end of the reference period), but have not yet been fully implemented. The Committee asks for information on the implementation of these new arrangements and their impact in terms of integrating young disabled persons into the various tiers of education – primary, secondary and tertiary.

According to the report, *mainstream schooling* can take two forms:

– So-called "individual" schooling in mainstream classes, if necessary with the aid of special equipment or teaching auxiliaries, and/or the support of special teachers.
In 2005-2006, 104,000 pupils with disabilities (65,000 in primary and 39,000 in secondary) received full or part-time individual schooling in an ordinary class. The number has apparently doubled since 1999.

– So-called "collective" schooling of a group of up to 12 children with the same type of needs in special units within mainstream schools. The education is organised and provided by a special teacher. As part of his or her personal plan, each child within such units will also spend time in mainstream school classes.
In 2005-2006, more than 47,000 pupils were educated in such integrated collective units, of whom 39,300 were in 4,000 integrated units (CLIS) in primary schools and 8,400 in 900 educational units (UPI) in junior and senior secondary schools.

The report acknowledges that the number of secondary, UPI, units is inadequate to ensure that all disabled pupils can continue on to secondary education. Even though by the start of the 2006-2007 school year, the figure had risen to 1,028, it is planned to open 2,000 by 2010. The Committee wishes to be informed of progress on this initiative, which according to the report should enable a much greater number of mentally impaired pupils to be educated in junior and senior vocational schools. It also asks for statistics in the next report on the actual number of such pupils benefiting from the planned opening of these additional UPI places.

The Committee notes the answers in the report to its questions on special education in the last conclusion (Conclusions 2007). It notes that the education ministry is responsible for teaching whereas the management of the establishments concerned, which are financed

from the health insurance budget and provided by voluntary associations, comes under the ministry of health. As some of its previous questions remain unanswered, the Committee reiterates in particular the following:

– what sort of qualifications special education syllabuses lead to;
– whether these qualifications are recognised for the purposes of continuing to further education or entering vocational education or the open labour market;
– the success rate in progressing to vocational training, further education or the open labour market.

Moreover, the Committee notes from the report that since 2001 the number of places in special establishments has fallen by 6% and this decline seems to have been offset, since 2006, by places offered by so-called educational and domiciliary care services (SESSAD). The Committee asks for precise figures on SESSAD places, including the number of places taken by young mentally disabled persons. It also asks what measures are planned to reduce the total number of disabled persons who are not being educated.

*Vocational training*

As the report contains no new information on the subject the Committee repeats its questions (Conclusions 2007) concerning:

– the number of persons receiving initial and continuing training in mainstream and specialised establishments;
– the number of requests for admission to mainstream and specialised establishments;
– arrangements for facilitating the integration of disabled persons and ensuring that the great majority of them can benefit from mainstream vocational training.

*Follow-up of collective complaint Autism-Europe v. France (complaint no.13/2002, decision on the merits of 4 November 2003)*

In its last conclusion (Conclusions 2007), the Committee noted that a series of measures were introduced to reduce the low level of schooling of persons suffering from autism. It also considered that some results had already been achieved. However, in the absence of all the relevant information, in particular statistics to show that those concerned really benefited from these measures, it concluded

that the situation was not in conformity with Article 15§1 of the Revised Charter, on the ground that equal access to education (mainstreaming and special education) of persons with autism was not yet guaranteed in an effective manner.

The report states that the Autism Plan 2005-2007 planned to establish 1,436 places for autistic persons in special education establishments and 350 in educational and domiciliary care services (SESSAD). According to the additional information submitted in October 2008, the Committee notes the authorisation and financing of 1,180 such places in establishments for autistic persons, as well as the authorisation and financing of the 350 places in SESSADs. Moreover, 1 300 places in *Maisons d'Accueil Spécialisées* ("MAS") and *Foyer d'Accueil Médicalisé* ("FAM") for adults with autism were authorised and financed during the same three years. The Committee however asks how many such places were effectively created and how many autistic persons took advantage of them during the reference period since such essential information was not provided. The information therefore continues to be insufficient for the Committee to decide whether tangible progress has been made towards securing autistic children's access to education. It repeats its request for information to enable it to determine whether and if so how the measures introduced and planned will really contribute to the schooling of persons suffering from autism.

The Committee notes that a new Autism Plan 2008-2010 has been announced. It will examine its content and impact during the next monitoring cycle concerning Article 15§1.

According to the report, the professional recommendations issued by the health authority responsible for the screening and early diagnosis of autism in children are based on the WHO definition of autism, as embodied in the 2005-2007 autism plan. However, the report does not say what changes have resulted in practice from the use of this definition. The Committee therefore reiterates its question.

The Committee finds that the additional information provided in the report is not sufficient to make it reconsider its previous conclusion on equal access of persons with autism to mainstream and special education.

*Conclusion*

The Committee concludes that the situation in France is not in conformity with Article 15§1 of the Revised Charter on the ground that it has not been established that persons with autism are guaranteed effective equal access to education (mainstreaming and special education).

*Paragraph 2 – Employment of persons with disabilities*

The Committee takes notes of the information provided in France's report.

The Committee notes that in 2006, it was estimated that 715,000 disabled persons were working:

– 575,000 were in ordinary paid employment (400,000 in the private and 175,000 in the public sectors);
– 35,000 were self-employed;
– 105,000 worked in various forms of sheltered or assisted employment.

The report draws attention to the increase in recruitment by firms (111,000 a year in 2006 compared with 7,000 in 1987).

*Anti-discrimination legislation*

The Committee notes the entry into force of Act 102/2005 of 11 February 2005 on equal rights and opportunities, participation and citizenship of persons with disabilities. The Committee notes that the new legislation provides satisfactory coverage of the subject matter of Article 15§2 of the Revised Charter.

The report states that the new law should improve the employment rate among disabled persons because it:

– reinforces the obligation to employ disabled persons in the private and public sectors;
– re-establishes the principle of disabled workers' right to equal treatment regarding access to employment and training and security of employment;
– requires employers to take practical measures to assist disabled persons in their work, including access, in accordance with their needs.

The Committee reiterates its previous question (Conclusions 2007) concerning the extent to which the principle of reasonable accommodation is applied in practice, to determine whether persons with disabilities do benefit from the right to non-discrimination in employment. It also asks whether reasonable accommodation has led to an increase in disabled persons' employment in the ordinary labour market.

*Measures to encourage the employment of persons with disabilities*

The Act of 11 February 2005 established *département* disabled persons' units (MDPHs), one of whose tasks is to draw up living plans for disabled persons. The plans include an occupational or vocational element. The units work in partnership with the various public employment services to offer rapid and effective assistance in finding employment. The Committee asks for information on how these arrangements work in practice and their impact in terms of integrating disabled persons into ordinary or sheltered employment.

The new law also established a disabled persons' integration fund (FIPHFP), to which the three branches of the public service – state, local and regional authorities and the hospital service – and the postal service are affiliated. The aim is to reinforce the obligation to ensure that disabled persons constitute 6% of the workforce by requiring parts of the public service that fail to meet this target to contribute to the fund, which is the equivalent of the one in the competitive sector managed by the AGEFIPH.

The rules governing the organisation, operations and management of this new arrangement are laid down in decree 2006/501 of 3 May 2006. The FIPHFP is a state public body administered by a publicly owned credit institution, the *Caisse des dépôts et consignations*. Its strategic guidelines, particularly concerning the use of fund financing, are decided by a national consultative body, which also has 26 regional committees concerned with more local activities.

The funds are intended to offer incentives for the employment of persons with disabilities. Funds are made available to public employers to pay for modifications to work places and associated studies, training and information for disabled workers, the salaries of staff to assist disabled persons to carry out their employment duties, staff training and information and subsidies to bodies and

organisations that contribute to helping disabled persons to take up work in the public service. The fund also pays for adaptations to work stations to help staff who have been designated unfit to perform their duties to remain in employment.

The report recognises that although real progress regarding disabled persons' employment has been achieved since the adoption of the Act of 11 February 2005, employers' obligation to employ at least 6% of disabled persons is not always fulfilled. The Government has therefore set up a group to monitor the law, drawn from voluntary associations, *départements* and members of parliament. It will review the working of the relevant bodies and identify difficulties arising and examples of good practice at local level. The Committee wishes to be informed of the monitoring group's findings.

The Act of 11 February 2005 has also established new arrangements concerning disabled workers access from sheltered to ordinary employment. Assisted employment establishments and services, the so-called ESATs (formerly CATs), offer disabled workers, or help them to find, knowledge and skills updating or reinforcement activities, as well as educational activities designed to increase their autonomy and involvement in everyday life. Special arrangements will also be introduced to grant recognition to experience gained.

Under the new law, disabled workers in ESATs may also be seconded to ordinary employers while maintaining their links with the parent body, thus enabling them to be employed in a normal work environment but still benefit from the medical, social and educational support provided by a multidisciplinary team in the sheltered establishment. The report says that this will enable disabled workers to enter a normal environment with suitable conditions, with a view to assessing whether they are capable of leaving the sheltered setting completely.

The Committee wishes to be kept informed of the practical results of these new arrangements. In particular, it asks whether the rate of transfer to the ordinary labour market has risen since the new provisions came into force, since the report claims that they should enable disabled workers in a sheltered environment to acquire or obtain recognition for the knowledge and experience necessary to find work in the outside world.

The report also states that decree 2005/223 of 11 March 2005 established two new services to offer persons with disabilities maximum possible autonomy: social assistance with everyday life (SAVS) and medical and social services for disabled adults (SAMSAH). The report explains that these two services assess individuals' need for assistance, identify the services to be provided, offer support and assistance with achieving and maintaining their social, and in particular, occupational, integration and offer social work and psychological follow up. These services may be provided in disabled persons' work places under agreements laying down the conditions and arrangements for their intervention. The Committee asks how many disabled persons have benefited from these services since their introduction.

Finally, the report states that the Act of 11 February 2005 has led to structural changes. Sheltered workshops have become modified undertakings (EAs) that form part of the ordinary work environment. As a result, there are only two activity sectors: the ordinary work environment (ordinary employers and EAs) and the protected sector (assisted employment establishments and services, or ESATs). The law also establishes new forms of agreement between the State and EAs, which now receive a specific grant from the former. The disabled workers' resources guarantee is replaced by lump sum assistance for individual posts paid by the Government. The report states that the level of state assistance for these new bodies will be decided after taking account of what each can manage to pay its disabled workers. The report informs that the arrangements will come into force once the relevant regulations are published. The Committee asks for more information on these new bodies in the next report, and in particular on how modified undertakings (EAs) operate.

*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 notes of the information provided in France's report.

*Anti-discrimination legislation and integrated approach*

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.

Act 102/2005 of 11 February 2005 on the equal rights and opportunities, participation and citizenship of persons with disabilities and its implementing regulations contains a number of provisions to make disabled persons more independent. They are entitled to compensation for the consequences of their disability, irrespective of the origin or nature of the impairment, age or life style.

The Committee 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

*Consultation*

A national disabled persons' advisory committee (CNCPH), with representatives drawn from numerous associations of disabled persons and their families, enables persons with disabilities to take part in framing and implementing the national disability solidarity policy. In particular, it was consulted on the draft legislation prepared by the Government that culminated in Act 2005/102.

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

Section 12 of Act 2005/102 provides for a compensatory benefit to meet the cost of human assistance, technical aids and housing and vehicle adaptations for disabled persons, together with any additional transport costs and exceptional purchases such as the acquisition and maintenance of products linked to the disability.

Persons with disabilities are entitled under Article 200.4 of the tax code to a tax credit for the purchase or installation of special equipment for their comfort. This represents 25% of the expenditure concerned, up to an annual limit of € 5,000 for a single person and € 10,000 for a couple.

*Measures to overcome obstacles*

Technical aids

Act 2005/102 entitles persons with disabilities to technical aids, the initial cost of which is met by the social protection system according to a fixed tariff. A detailed list of such aids is laid down in ministerial order and regularly updated.

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

Section 75 of Act 2005/102 gives French sign language full status as a language. Section 74 also provides for television programmes to be adapted for the deaf and hard of hearing.

The Act also has a number of provisions for overcoming obstacles, such as:

– the obligation to make on-line public communication services of central and local government and public bodies accessible to disabled persons (section 47);

– the right to an appropriate form of communication of the individual's own choice in administrative, civil and criminal courts, with the costs met by the state. Where circumstances dictate, persons with visual disabilities are entitled to technical assistance to give them access to court documents (section 76);
– the right of persons with hearing disabilities, at their request and in dealings with public authorities, to simultaneous written or visual translation/interpretation of any oral or other sound-based information concerning them, the arrangements and deadline to be laid down in regulations (section 78).

Mobility and transport

Section 45 of Act 2005/102 requires public transport services to be accessible to persons with disabilities or reduced mobility within ten years and gives operators three years to draw up access plans for their transport services. Should this be technically impossible, the operator must provide suitable means of transport, whose cost to disabled persons must not be in excess of the cost of existing services. All existing underground and other public transport networks must introduce alternative forms of transport that satisfy the aforementioned conditions within three years. The Committee asks for the next report to state whether disabled persons' access to public transport, including underground networks, has improved in practice. It also asks whether they are entitled to free transport or concessionary fares.

Housing

Order 2006-555 of 17 May 2006 on disabled persons' access to public buildings and other facilities and to private dwellings implemented part of Act 102/2005 of 11 February 2005. The order introduces certain requirements concerning access to new and existing blocks of flats, new individual dwellings and new and existing public buildings and other facilities. It specifies the criteria to be met for a building to be accessible and the action to be taken to enable disabled users to move around, enter the premises or facilities, make proper use of them, find their way and communicate.

The regulation requires all the services and facilities of new public buildings to be accessible. The relevant authority may not authorise the construction of a public building or work on an existing one until

the appropriate *département* safety and accessibility advisory committee has been consulted (the composition and mandate of these committees were redefined in order 2006/1089 of 30 August 2006).

Improvement work on private dwellings is supported by the national housing agency (ANAH). In 2006, nearly 13 000 dwellings received grants for home adaptations. The figure is steadily rising (11 400 dwellings assisted in 2005) and represents nearly 10% of the dwellings receiving agency support. This state assistance to enable people to remain in their own homes is supplemented by the efforts of local authorities, businesses, retirement funds and voluntary associations.

In addition to supporting accessibility and home adaptations, the state is heavily involved in financing residential accommodation for persons with disabilities. There are currently 100 000 such places for disabled adults in France. The state funded 2 100 places for adults in 2005 and more than 2 700 in 2006.

Culture and leisure

The Government's policy is to encourage greater access to artistic and cultural activities. Section 41 of Act 2005/102 requires all buildings to which the public are admitted to meet the requirements set for disabled persons to enter and move about in the parts open to the public.

The Ministry of Culture and Communication also encourages attendance at cultural events through the publication of brochures and guides. Various means are adopted to ensure that disabled persons are informed of cultural and artistic activities, such as library material in Braille or large characters, tactile exhibitions, visits and lectures in sign language and artistic workshops that take account of different forms of impairment.

Act 2000-627 of 6 July 2000 on the organisation and promotion of physical and sporting activities helps to make the latter more accessible to persons with disabilities. Three federations - for the physically disabled, for adapted sports and for the deaf – offer persons with disabilities an opportunity to discover and take part in sporting activities. The Committee asks whether the state finances sporting activities for disabled persons, and if so to what extent.

*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 States Parties**

*Paragraph 1 Foreign population and migratory movements*

The Committee takes notes of the information provided in France's report.

According to the most recent available statistics (1999)[1], France's estimated resident foreign population was 3 263 200 (or 5.6% of the total), the majority of whom were from north African countries. Of nationals of States Parties, the most numerous were Portuguese, followed by Turks and Italians.

*Work permits*

Apart from nationals of States Parties to the Agreement on the European Economic Area, foreign nationals wishing to earn a living in France normally require a work and residence permit.

The Committee notes that, apart from Cypriots and Maltese, nationals of countries that joined the European Union on 1 May 2004 still require work permits for a transitional period.

*Relevant statistics*

The report describes the flows of permanent, temporary and seasonal employees. The Committee notes that there was an increase in the number of seasonal workers – mainly Poles – during the reference period. Between 2003 and 2005, they increased from 14 566 to 16 242. There was also a slight rise in the number of permanent and temporary employees.

The report supplies no statistics on the number of work permits applied for, granted and refused although means of obtaining the required statistics are currently being introduced and should be operational in 2008.

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[1] OECD, Trends in International Migration, Sopemi, 2006 edition.

The Committee refers to previous conclusions under the Charter (Conclusions XV-2) and the Revised Charter (Conclusions 2003), which were deferred for lack of information on the number of work permits granted and the number of applications lodged. It also concluded that the situation in France was incompatible with Article 18§1 of the Revised Charter because there was no evidence that existing regulations on the right to engage in a gainful occupation were applied in a spirit of liberality (Conclusions 2005).

*Conclusion*

The Committee concludes that the situation in France is not in conformity with Article 18§1 of the Revised Charter on the ground that it has not been established that the rules governing the right to engage in a gainful occupation are applied in a spirit of liberality.

*Paragraph 2 – Simplifying existing formalities and reducing dues and taxes*

The Committee takes notes of the information provided in France's report.

The report states that there has been no change during the reference period.

The Committee notes from another source[1], that new legislation on immigration and integration (Act 2006-911) was enacted on 24 July 2006 and published in the official journal of 25 July 2006. The new law makes changes to the Act on the entry and stay of foreign nationals and on the right to asylum, whose relevant provisions had previously (Conclusions XV-2) been found to be in conformity with Articles 18§§2 and 3 by the Committee.

In the absence of sufficient information on the content of the modifications which arose, the Committee is not able to assess the new provisions with regard to Article 18§2.

However, it notes that section 12 of the new immigration and integration legislation introduces two particulars to be included on residence permits, to identify temporary workers, whose employment

[1] www.legifrance.gouv.fr

contracts are for less than twelve months, and seasonal workers on seasonal contracts. The Committee also notes the introduction of a totally new "skills and talents" card, which is subject to a special procedure that is quite separate from the one that applies to work permits. The Committee asks for more information.

It also asks for up-to-date information in the next report on any possible changes to legislation during the reference period that could have implications for Article 18§2 of the Revised Charter.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in France is in conformity with Article 18§2 of the Revised Charter.

*Paragraph 3 – Liberalising regulations*

The Committee takes notes of the information provided in France's report.

The report states that there has been no change during the reference period.

The Committee notes from another source[1], that new legislation on immigration and integration (Act 2006-911) was enacted on 24 July 2006 and published in the official journal of 25 July 2006. The new law makes changes to the rules governing the entry and stay of foreign nationals and the right of asylum, whose relevant provisions had previously been considered and found to be in conformity with Articles 18§§2 and 3 (Conclusions XV-2).

However, the conditions governing access to the national labour market, the conditions of employment and the consequences of loss of employment are largely unchanged. For example, to enter the labour market, it is still necessary to obtain a work permit from the *département* directorate of labour, employment and training, after the latter has considered the employment situation in the relevant occupation and geographical area. However, under section 12 of the immigration and integration law, the employment situation cannot be

[1] Idem.

used to justify the rejection of work permit applications by foreign nationals in connection with occupations and geographical areas experiencing recruitment difficulties. The relevant occupations appear on a list in a joint ministerial order. The Committee asks which occupations are concerned. It also asks for up-to-date information in the next report on any possible changes to legislation during the reference period that could have implications for Article 18§3.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in France is in conformity with Article 18§3 of the Revised Charter.

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

The Committee takes notes of the information provided in France's report.

The Committee notes from the report that there have been no changes in the situation it previously considered to be in conformity.

It asks for the next report to provide a complete list of practical circumstances in which French citizens may be prevented from leaving the country, and their legal basis.

*Conclusion*

The Committee concludes that the situation in France 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 notes of the information provided in France's 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 2002, 2004 and 2006).

The Committee notes that a new Act on gender equality was adopted during the reference period, namely the Act of 23 March 2006 on pay equality for men and women. The main objective of this Act is to abolish gender pay discrepancies. It obliges companies of over 50 employees to conduct sectoral negotiations every year with a view to defining and putting in place measures for the abolishment of the gender pay gap before 31 December 2010. The negotiations are to be carried out on the basis of the annual comparative report on the general situation on employment and training of men and women within the company.

A number of sanctions are foreseen in the 2006 Act for failure to carry out negotiations. The Committee recalls that the preceding legal instrument in this area, the 2001 Génisson Act, also established mandatory bargaining on equality at company level, but that the level of compliance with this law was low. It therefore wishes to be kept informed on how the sanctions in the new law are applied to companies that fail to negotiate.

Another objective of the 2006 Act is to ensure that women on maternity or adoption leave are not penalised in terms of their progress through the pay scales. An employee returning from maternity or adoption leave is entitled to benefit from the general pay rises, as well as the average individual wage rise received during the period of leave by workers in the same occupational category. With a view to preserving social dialogue, the Act permits social partners to agree on another mechanism for wage adjustments, provided it is at least as favourable as the one envisaged in the law.

The Act also contains a number of measures for the conciliation of work and family life. The measures initially included in the Act establishing quotas for balanced gender representation in professional bodies (boards of public and private companies, work councils, staff committees) were annulled by the Constitutional Council, on the ground that quotas in this field were forbidden.

The Committee considers the 2006 Act to be a positive development. It asks to be kept informed on how the law is implemented in practice, and, in particular, if the obligation of mandatory collective bargaining is being effectively translated into gender equality clauses and terms in company and sector collective agreements. The Committee also asks if the Act permits, in equal pay litigation cases, to make a comparison of pay and jobs outside the company directly concerned.

In reply to the Committee's request for information on the number of complaints lodged and offences found in discrimination cases, the report indicates that in 2002 and 2003 there were only 2 incriminations, each year respectively, for breach of an employer's obligation to negotiate on gender equality. The Committee wishes to know if employers have been convicted by the courts for gender discrimination at the workplace on other grounds than for not negotiating, and in the affirmative, the number and type of such cases in the courts.

*Specific protection measures*

The Act of 23 March 2006 establishes that pregnancy is a forbidden ground for discrimination. Female employees discriminated against due to pregnancy will see the burden of proof switched to the employer, and also have the right to be reinstated if the dismissal was considered discriminatory.

The report states that a number of specific financial aid mechanisms to promote equality at the workplace are available to companies: one is the contract for professional equality, and the other is the contract for balance in jobs. In 2006, there were 119 beneficiaries of the first type of contract, and 48 of the second, which shows the modest impact of these schemes.

*Position of women in employment and training*

The Committee notes that the comparative figures on women's position in employment in 2006 are very similar to those it considered in its previous conclusion (Conclusion 2006). The employment rate of women in 2006 was 57.7% compared to 68.5% for men (a gender gap of 10.8%)

That same year, the unemployment rate for women was 9.9%, compared to 8.4% for men[1].

The report reiterates that a large majority of workers in part-time employment continue to be women. In 2005, 30,8% of part-time workers in total employment were women, against 5.7% of men. There is also a larger share of women employees with temporary contracts, but the gap here is considerably less significant, 8.7% of women against 5.3% of men.

With regard to pay, the Committee notes that the pay gap between women and men continued to stand at 19% in 2005 (calculated for enterprises with more than ten employees, excluding agriculture and public employment). Leaving aside some of the known reasons for the wage gap, such as the structure of the population or the nature of the jobs occupied by women, there is still an unexplainable residual pay difference of approximately 11% between the hourly salaries of men and women, which may partly reflect the existence of wage discrimination.

The Committee will carefully consider in future examinations of this provision whether the new Act of 23 March 2006, and other relevant initiatives in this field, have served in practice to correct pay inequality in France.

*Measures to promote equal opportunities*

A framework agreement was entered into in 2005 to promote the access of women to the labour market and to guarantee them quality jobs. The agreement reinforces the means to combat female

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[1] Figures from the Report on Equality between women and men – 2008 (from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions).

unemployment by encouraging their employment in sectors where they are little represented.

The report states that a wide array of tools for the promotion of equality in the education system have been put into place since 2000 (for example, prizes to encourage the technical or scientific vocation of young girls and women). In reply to the Committee, the report describes the results of the 2000 Convention on equality in the education system, and also indicates the main lines for the drawing up of the 2006 Convention, where the enlargement of training choices for young girls continues to be deemed essential for achieving professional equality.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in France is in conformity with Article 20 of the Revised Charter.

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

The Committee takes notes of the information provided in France's report.

It notes that the situation which it has previously held to be in conformity with Article 24 of the Revised Charter has not changed.

However, 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 France and what is the consequence on the employment relationship once an employee has reached retirement and/or pensionable age. The Committee wishes in particular to know whether French law prescribes or provides for termination of the employment relationship on the ground 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 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 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 the legal framework complies with this approach and, in the affirmative, how.

*Conclusion*

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

In accordance with Article 21-1§3 of the Committee's Rules of Procedure, a dissenting opinion of Mr. N. Aliprantis, joined by Mr. J-M. Belorgey, members of the Committee, is appended to this conclusion.

**Article 25 – The right of workers to the protection of their claims in the event of the insolvency of their employer**

The Committee takes notes of the information provided in France's report.

The Committee notes that the so-called business protection law, No. 2005-841 of 26 July 2005, came into force on 1 January 2006.

Under French law, in the event of employers' insolvency employees' claims are protected by a combination of preference and insurance. The insurance system is operated by an association of employers' organisations (AGS) set up for that purpose and financed from employers' contributions.

The term insolvency means cessation of payments, in other words the inability to meet all liabilities due from available assets. In principle, the procedure that follows cessation of payments is in two stages, with receivership preceding judicial liquidation with a view to maintaining the undertaking in business and thereby meeting its liabilities and safeguarding employment. However, when the state of the undertaking makes a prior period of observation pointless, the courts may move immediately to the liquidation stage. On this issue, the Committee refers to its previous conclusions (Conclusions 2003 and 2005).

The new business protection law establishes an additional collective procedure prior to receivership which employers can initiate if they can show that their difficulties are likely to lead to cessation of payments. The procedure is intended to facilitate reorganisation of the business to enable to it continue to trade, maintain employment and discharge its liabilities. Bearing in mind the new procedure and in answer to the Committee, the report states that the AGS guarantee now covers the following claims:

– sums owed to employees on the date of the judicial decision to commence receivership or liquidation proceedings,
– claims resulting from premature termination of contract during the observation period, in the month following the court decision to implement a safeguard, receivership or assignment plan, in the fortnight following a liquidation decision and during the temporary continuation of trading period authorised by a judicial liquidation decision,

– when the courts order judicial liquidation, sums owed during the observation period, or the fortnight or month following the liquidation decision, up to a maximum equivalent to one and a half months' work.

The guarantee also covers social security and other contributions provided for in law or collective agreements.

The report states that the claims resulting from employment contracts that benefit from "super-preference" under Article L.143-10 of the Labour Code mainly concern salaries and wages and supplements, other benefits, overtime, allowances and bonuses provided for with the parties' agreement plus any claims provided for in a collective agreement.

The Committee asks what overall percentages of employees' claims are met from the aforementioned insurance and preference systems.

In its last conclusion (Conclusions 2005), the Committee noted that the sums guaranteed were equal to six times the monthly ceiling used in respect of unemployment insurance. However, it notes from another source[1] that the amount varies in practice according to how long the contract on which the claim is based has been in force. For example, it is six times the monthly ceiling if the contract had been in force for more than two years before the relevant judicial decision, five times if it had been in force less than two years and four times if it had been in force less than six months.

The Committee also notes that Article L.143-11-1 of the Labour Code, as amended by the business protection law, now requires all traders, persons registered with the chamber of trades, farmers and any other individuals who are self-employed to insure their employees against non-payment of sums owed to them. The personal scope of the insurance system has therefore been extended (see Conclusions 2005). The only employees not now covered by the guaranteed insurance system are ones working for individual employers, public law corporations and the French railway company, SNCF. The Committee again asks approximately how many persons this represents.

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[1] V. Allegaert, *Les droits des salariés et le droit européen des procédures d'insolvabilité*, JCP S 2007, 1342, no. 19.

In French law, sums owed to domestic staff and home workers are not covered by the insurance institution or the preference system. On this issue, the Committee refers to its previous conclusion (Conclusions 2005). It again asks whether these groups benefit from alternative forms of protection and if so how many domestic staff and home workers are covered.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in France is in conformity with Article 25 of the Revised Charter.

**Dissenting opinion of Mr. Aliprantis, joined by Mr. Belorgey**

*Conclusion relating to Article 24*

The Committee finds that the situation in France was unchanged during the reference period (1 January 2005 – 31 December 2006) and hence that it is still in conformity with Article 24 of the Revised Charter.

Yet, during the reference period – even though the French report does not mention this – there was a significant change in the situation as a result of the adoption and entry into force of Ordinance No. 2005-893 of 2 August 2005 establishing the New Recruitment Contract. This contract was covered by the Labour Code, save for the provisions relating to grounds for dismissal during the first two years of employment.

We consider that the entitlement to dismiss employees without giving reasons went beyond the exceptions permitted by Article 24 on the same grounds as those set out in the report of the committee set up to examine the representation alleging non-observance by France of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Termination of Employment Convention, 1982 (No. 158), made under article 24 of the ILO Constitution by the *Confédération générale du travail - Force ouvrière*.

The New Recruitment Contract has since been repealed, by Act No. 2005-596 of 25 June 2008.

Nonetheless, the situation was not in conformity with Article 24 of the Revised Charter during the reference period and we consider that the Committee should have found that there had been a breach of the article.

# Chapter 11 – Conclusions concerning Articles 1, 10, 15, 18 and 20 of the Revised Charter in respect of Georgia

## 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 Georgia on 22 August 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 Georgia submitted it on 30 October 2007. On 11 April 2008, a letter was addressed to the Government requesting supplementary information regarding Articles 1§1, 1§2, 1§3, 10§2, 10§4, 15§3, 18 and 20. The Government submitted its reply on 28 July 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).

Georgia has accepted these articles with the exception of Articles 9, 10§§1, 3, 5, 15§§1 and 2, 24 and 25.

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

The present chapter on Georgia concerns 12 situations and contains:

– 5 conclusions of conformity; 1§3, 10§2, 18§1, 18§2 and 18§3;
– 0 conclusions of non-conformity.

In respect of the 7 other situations concerning Articles 1§1, 1§2, 1§4, 10§4, 15§3, 18§4 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 next Georgian 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 Georgia's report.

*Employment situation*

The Committee notes that according to the report, growth in Georgia is very healthy (9.4% in 2006).

The employment rate was 53.8% in 2006. The Committee notes that this figure is significantly lower than the EU average[1] (66.2% the same year). The majority of people in employment are self-employed. Since this situation differs from most European countries, the Committee asks the Government to explain the reasons.

In reply to the Committee's question, the Government indicates that the unemployment rate slightly decreased from 13.8% in 2005 to 13.6% in 2006. Unemployment has however been on an upward trend, having risen from 11.5% in 2003.

It notes from another source[2] that the proportion of long-term unemployed is very high. It reached 61.5% in 2006. The Committee notes that the unemployment rate for young people (15-24 year-olds) was also quite high during the reference period (29.3% in 2006).

In reply to the Committee's question, the Government specifies that the proportion of unemployed women amounted to 45% in 2006.

In reply to the Committee's question the Government states that no statistics concerning the unemployment rate for foreigners and persons with disabilities are available. The Committee nevertheless requests the information on the unemployment rates for groups that are potentially vulnerable on the labour market otherwise it will be unable to properly assess the situation. The Committee also wishes to receive information on the unemployment rate among minorities.

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[1] Source: Eurostat

[2] Statistics Department of the Ministry of Economic Development of Georgia

*Employment policy*

The Committee is led to understand from the report that the main mid-term objectives of the Government with regard to employment policy go towards full employment, to increase worker's competitiveness through vocational training and to match needs. Priority is given to active measures.

In reply to the Committee's question, the Government indicates that various reforms of the social security system, based on households' economic needs facing unemployment, have been adopted since 2005. These households especially benefit from social assistance packages and unemployment benefits. The unemployment benefits system has been reformed so that an enlarged number of households benefit from the system.

The Committee notes from the report that during the same period the two main national employment programmes were set up and that these are intended primarily to help the unemployed, including the long-term unemployed, to find a job.

The two programmes, one of which was launched in 2001 for a five-year period and the other in 2006, include measures to promote the creation of temporary posts and vocational training and retraining for the unemployed, including the long-term unemployed.

There are certain local schemes to promote employment among young people. In 2006, the City of Tbilisi launched a two-year programme focusing on youth employment, in which 5,000 participants have been enrolled.

In reply of the Committee's question, the Government specifies that a total of 163,800 jobseekers took part in active labour market measures during the reference period, which corresponds to an activation rate of about 62%.

The Committee would like the next report to indicate what is the average length of time that passes between a person registering as unemployed and he or she receiving an offer of an active labour market measure.

In reply of the Committee's question, the Government states that the total spending on employment policy (active and passive measures) amounted to 0.5% of GDP in 2005. According to the Government,

this spending is increasing. The Committee asks the next report to specify what portions of this total are earmarked for active 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 Georgia's report.

1. Elimination of all forms of discrimination in employment

The Committee reiterates that under Article 1§2 of the Revised Charter, legislation must prohibit all discrimination in employment at least on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation or political opinion (Conclusions 2006, Albania). This provision is intrinsically linked to other provisions of the Charter, particularly Article 20 (right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex) and Article 15§2 (right of persons with disabilities to employment). As Georgia has accepted Article 20, non-discrimination against women is dealt with under that provision.

Article 38§1 of the Constitution provides: “Georgian citizens shall be equal in social, economic and cultural life without discrimination on the grounds of national, ethnic, religious or linguistic origin, in accordance with the principles and the internationally recognised standards of international law, and shall all have the right to pursue their culture freely without any discrimination or restriction. …”. Article 2§3 of the Labour Code (of 25 May 2006) states: “Any kind of discrimination on grounds of race, colour, language, ethnic or social background, nationality, origin, property or title status, place of residence, age, sex, sexual orientation, disabilities, membership of a religious group, a union or any other group, family status or political or other opinions shall be prohibited in labour relations”. The Committee asks for the next report to state how these legal provisions are implemented and applied with regard to each of the forms of discrimination in employment prohibited by Article 1§2.

Legislation must prohibit both direct and indirect discrimination (Conclusions XVIII-1, Austria). The Committee asks for the next report to state whether the legislation prohibits indirect discrimination, and, if so, how the ban is implemented.

The discriminatory acts and provisions prohibited by Article 1§2 are all those which may occur in connection with recruitment and employment conditions in general (mainly remuneration, training, promotion, transfer, dismissal and other detrimental action) (Conclusions XVI-1, Austria). Exceptions may be made to the prohibition of any form of discrimination in employment for jobs with certain fundamental occupational needs or to permit positive action measures (Conclusions 2006, Bulgaria). The reply to the letter to the Government states that there is no provision in Georgian legislation for any exception to the prohibition on discrimination.

The Committee also points out that the legislation must ensure that the prohibition of discrimination is effective and must, at least:

– grant the power to set aside, withdraw, repeal or amend any provisions contained in collective agreements, employment contracts or internal company rules that are contrary to the principle of equal treatment (Conclusions XVI-1, Iceland). The Committee asks what provision the legislation makes in this respect and how these laws are implemented;
– ensure that employees who lodge complaints or bring actions in court are protected from dismissal or other reprisals by employers (Conclusions XVI-1, Iceland). The Committee also asks what provision the legislation makes in this respect and how these laws are implemented in practice;
– provide for appropriate and effective remedies in the event of alleged wage discrimination; in the event of discrimination, compensation must be effective, proportionate and sufficiently dissuasive. It follows that the imposition of a predetermined upper limit is not in conformity with Article 1§2 as, in certain cases, this may prevent an award of damages commensurate with the loss and damage sustained and may not be sufficiently dissuasive for the employer (Conclusions 2006, Albania). The Committee asks what remedies are available for persons who believe they have been a victim of discrimination and what compensation may be made where it is found that there has been discrimination. The reply to the letter to the

Government states that no upper limit on compensation is set by Georgian legislation, and that the amount of compensation is determined by the courts on a case-by-case basis.

The Committee notes that 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. The reply to the letter to the Government states that the burden of proof is determined according to best international practice and shared between the parties to a dispute. The Committee asks on what domestic legislation this practice is based.

The Committee points out that the following measures also help to ensure that efforts to combat discrimination in accordance with Article 1§2 of the Charter are effective:

– granting trade unions the right to take action in cases of discrimination in employment, including action on behalf of individuals. The Committee asks whether trade unions are granted this right in Georgia;
– allowing collective action by groups with an interest in obtaining a ruling that the prohibition of discrimination has been violated. The Committee asks whether this type of collective action is allowed in Georgia;
– setting up a specialised body to promote equal treatment independently, especially by providing discrimination victims with the support they need to take proceedings (Conclusions XVI-1, Iceland). The Committee notes that Georgia does have a governmental committee for social partnership on vocational training. It asks whether there are any other specialised bodies with broader powers in the field of equal treatment.

The Committee points out that, while it is possible for states to make access to employment on their territory for foreign nationals subject to possession of a work permit, they cannot ban nationals of states party to the Charter in general from occupying jobs for reasons other than those set out in Article G of the Charter. The only jobs from which foreigners may be banned are therefore those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority (Conclusions 2006, Albania). Article 47§1 of the Constitution states

that “foreign nationals and stateless persons residing in Georgia have the same rights and duties as Georgian citizens, subject to any exceptions prescribed by the Constitution or the law”. The reply to the letter to the Government states that neither the Constitution nor the law provides for any exception to this rule in the employment sphere, except for work in the public services, the military and the police. The Committee asks for the next report to clarify whether foreign nationals and stateless persons are barred from all occupations in the public services and, if this is not a blanket ban, precisely which occupations they are barred from.

Lastly, the Committee would point out that excluding people from public office by either refusing to employ them or dismissing them on the ground of their past political activities is prohibited where it is not “necessary” within the meaning of Article G as it does not apply solely to services which have responsibilities in the field of law and order and national security or to functions involving such responsibilities (Conclusions 2006, Lithuania). The Committee asks if this type of restriction is allowed in Georgia for past or present political activities and, if so, in what way it is “necessary” within the meaning of Article G.

2. Prohibition of forced or compulsory labour

The Committee emphasises that forced or compulsory labour of any form must be prohibited. The fact that national law is not applied in practice is not sufficient to demonstrate that a state is in conformity with the Charter (Conclusions XIII-3, Ireland). Article 30§1 of the Constitution states that “freedom of labour shall be guaranteed” and infringements of this freedom are punished under Article 168 of the Criminal Code through payment of a fine, up to one year’s compensatory service or up to two years’ imprisonment. According to the report, forced labour is prohibited in Georgia. Since 2003, the Criminal Code has included provision for a prison sentence of seven to ten years for anyone found guilty of forcing an adult to work and eight to eleven years where a minor is involved.

The report also states that offenders are sometimes sentenced to community service instead of imprisonment.

*Prison work*

Prison work is governed by sections 53 to 56 of the Prisons Act. Prisoners may be given work inside prison but they may not be employed in tasks which undermine their honour or dignity. Working conditions must comply with the Prisons Act and Georgian labour law. Prisoners may not be forced to work overtime or work during rest days or leave. Total working hours may not exceed eight hours a day. In exceptional circumstances, at the prison authorities' instigation, prisoners who agree to may be employed outside the prison on relief or prevention teams dealing with natural disasters or industrial accidents or breakdowns or in work to improve prison grounds and buildings.

15% of prisoners' salaries are transferred to the state budget, 10% to a special prison maintenance account, 50% to the prisoners themselves to cover their personal expenses and the remaining 25% may be deducted in accordance with execution documents or paid to the prisoner.

Prisoners whose capacity for work is lost when working in prison may claim damages.

Lastly, the report acknowledges that the law does not clearly prohibit prison work for private individuals or firms. The Committee asks for more details on this point, regardless of whether any such work takes place inside or outside the prison. The Committee asks in particular whether prisoners can refuse such work.

3. Other aspects of a worker's right to earn his living in an occupation freely entered upon

The Committee points out that several other practices can pose problems under Article 1§2:

*Length of service required to replace military service*

The Committee would emphasise that the length of service carried out to replace military service (alternative service), during which those concerned are denied the right to earn their living in an occupation freely entered upon, must be reasonable (Quaker Council for European Affairs (QCEA) v. Greece, complaint No. 8/2000, decision on the merits of 25 April 2001, §§23-25). The Committee

assesses whether the length of alternative service is reasonable by comparing it with the length of military service. For example, where the length of alternative service is over one-and-a-half times that of military service, it considers the situation to be incompatible with Article 1§2 (Conclusions 2006, Estonia). 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 alternative service instead, it cannot make the latter longer than is necessary to ensure that refusal to serve on grounds of conscience is genuine and the choice of alternative service is not seen as advantageous rather than a duty. The Committee notes that in Georgia compulsory military service lasts 18 months and alternative service is the same length for citizens with a higher education and 24 months for all others.

*Part-time work*

The Committee notes that there must be legal safeguards attached to part-time work. In particular it asks whether there is a minimum working week, and whether there are rules to avoid undeclared overtime work and ones requiring equal pay, in all its aspects, between part-time and full-time workers (Conclusions XVI-1, Austria).

The Committee notes that the report fails to address this question. It asks therefore for the next report to describe the legal safeguards attached to part-time work and how they are implemented.

*Privacy at work*

In the general introduction to Conclusions 2006 the Committee asked 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" (Conclusions 2006, general introduction, §37). The report does not contain this information. The Committee therefore asks for it to be included in the next report, in the light of the observations on the right to privacy

under Article 1§2 in Conclusions 2006, general introduction, §§13-21.

*Restrictions linked to the fight against terrorism*

The Committee 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 defers its conclusion.

*Paragraph 3 – Free placement services*

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

The Public Employment Service was founded in 2001, with, as its legal basis, the Public-Law Legal Entities Act and the Employment Act. Its main functions are to provide information, implement employment policy and place unemployed and employed jobseekers. In 2001 the PES had 68 local offices.

In reply to the Committee's question, the Government confirms that Public Employment Service services are free of charge to users.

The report states that the PES has been reorganised several times, notably in 2004, under the 2004 legislation amending the Employment Act, and in 2005, when 10 regional departments divided into 68 district departments were created. A project to combine the PES with all social services for the unemployed is scheduled for 2007.

The Committee requests information on the geographical distribution of these various services and their staffing.

In reply to the Committee, the report indicates that the total number of notified vacancies to the public employment services has risen from 52,164 in 2005 to 93,425 in 2006.

According to the report, unemployed persons assisted by the placement services totalled 100 000 in 2006. Half of those were given reskilling under a special programme.

The Committee also notes that a few private placement agencies have been allowed to operate after notifying the Ministry of Labour, Health and Social Affairs under the Employment Act. They are also required to report to the ministry each year on their activities. There were 17 such private agencies. Under the new 2006 labour code the Ministry of Labour, Health and Social Affairs is required to keep an up-to-date register of private placement agencies. The Government recognises that, despite the conclusion in 2005 of a co-operation memorandum between the private placement agencies and the PES, co-ordination between the public services and the private agencies is unsatisfactory.

The Committee wishes to know the conditions under which the private agencies provide their services, what is the aim of the coordination between public services and private agencies, and what steps are planned to improve the situation.

The Committee requests that the next report state the placement rate – the ratio of placements by the public employment services to employment offers registered. It also asks the next report to state the placement rate concerning the private agencies.

The Committee also wishes to know the time it takes to fill a vacancy, the total number of people who found employment through the public employment services, and the public employment services' market share (the number of placements as a percentage of the total number of recruitments in the labour market).

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Georgia 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 Georgia's report.

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 to the Charter 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, Georgia has not accepted these provisions and the Committee assesses the conformity of the situation under Article 1§4.

The Committee considers the following questions 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 training.

*Vocational guidance*

According to the report, vocational training centres offer vocational guidance to school-leavers, students on vocational courses and job-seekers. These centres have a qualified staff and co-operate with employers. A national vocational guidance strategy is currently being implemented. The Committee asks for the next report to give information on this strategy.

The Committee would also like the next report to provide more detailed information on the organisation and the staff of the bodies offering vocational guidance. It asks whether vocational guidance is provided free of charge and how much spending is allocated specifically to vocational guidance.

The Committee would like to know precisely what provision there is for guidance for persons with disabilities.

*Continuing vocational training*

On 8 May 2007, the Vocational Training Act came into force. Under section 7 of this Act, everyone is entitled to vocational training in order to acquire the knowledge and skills they need to engage in an occupational activity.

However, no information on continuing vocational training is given in the report. The Committee asks for the next report to provide information on continuing vocational training for workers and unemployed persons.

The Committee wishes to know what is the demand for training placements and 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*

No information on this subject is given in the report.

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.

According to the report equal treatment is guaranteed to all the persons concerned including nationals of other states party to the Charter residing or working legally in Georgia, and this applies equally to persons with disabilities.

*Conclusion*

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

**Article 10 – The right to vocational training**

*Paragraph 2 – Apprenticeship*

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

The Committee notes that the Law of Georgia on Vocational Education entered into force on 28 March 2007. The Committee asks that the next report provide information about the implementation of this law in practice, as well as on any other legal instrument governing the organisation, operation and financing of apprentice-ships.

The Committee notes from the report that the general aim of vocational training in Georgia is, among others, to enhance professional qualifications and competitiveness of workers with a view to better preparing them to face labour market challenges whether by means of employment or self-employment. Other aims of vocational training in Georgia are to develop a system of life-long learning and to create a study-enterprise partnership in education.

In 2006, 2,240 students were trained in vocational educational institutions. The state financing for this amounted to 4.3 million Georgian Laris (GEL) (€ 2 million). These indicators have significantly increased in 2007. The Committee wishes to be kept informed of these developments. As regards the various categories of vocational training, the report states that six fields have had a priority: agriculture, construction, tourism, transport, crafting (artisan teaching) and information technologies.

The report states that apprenticeship training is accessible to anyone upon completion of the basic general education and aims at preparing qualified specialists. The report refers to craft education and states that there are two forms of this type of apprenticeship training. *Formal* training can be acquired in the accredited educational institution of vocational training (study centres, general or higher educational institutions etc) and comprises both theoretical and practical study. A relevant educational certification document is issued upon completion. *Informal* or independent, non-institutional training may also result in a certification to be issued by relevant attestation bodies as stipulated by the legislation of Georgia. The Committee asks whether this system applies to all types of

apprenticeship training, other than craft education and what is the average number of apprentices in the above mentioned fields.

The Committee notes that vocational education is financed both by the state as well as private persons. Vocational study centres receive vouchers from the state, for each student. They can as well attract private funding.

The Committee notes that apprenticeship training is also accessible to socially disadvantaged groups of population. The report states that the equality of access to apprenticeship training is ensured for all those interested, including nationals of the other States Parties lawfully resident or regularly working in Georgia.

The Committee recalls that Article 10§2 guarantees the right to access to apprenticeship and other training arrangements. Apprenticeship means training based on a contract between the young person and the employer, whereas other training arrangements can be based on such a contract but also be school-based vocational training. This education should combine theoretical and practical training and close ties must be maintained between training establishments and the working world. Under this paragraph the Committee principally examines apprenticeship arrangements within the framework of an employment relationship between the employer and the apprentice, leading to a vocational education.

From the supplementary information provided by the Government the Committee notes that the length of apprenticeship varies by profession type and depends on the agreement between the education institution and the employer but cannot exceed 6 months. The conditions of apprenticeship also vary by type and are negotiable. Apprentices are remunerated at the same rate as employees holding the same position.

The Committee requests that the next report provide information on the selection of apprentices, the selection and training of instructors. It also asks how many apprenticeship places were on offer, approximately how many young people took up apprenticeship-style training and how many completed the training.

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

*Paragraph 4 – Long term unemployed persons*

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

The Committee notes that the report does not provide any information with respect to Article 10§4. The Committee notes from the information provided by the Statistics Department of the Ministry of Economic Development of Georgia that long-term unemployment represented 62.6% of total unemployment in 2005 and 61.5% in 2006.

From the report on Article 1§1 the Committee takes note of measures taken in the framework of the "State Programme for Social Security and Employment", the state financing of which amounted to 1,700,000 Georgian Laris (GEL) (€800,000) and which included measures for vocational training and retraining for the unemployed. However, it is not clear what proportion of resources were dedicated to the long-term unemployed and what specific measures where taken in order to train and reintegrate them into the labour market. The Committee notes that 35% of the total employment policy expenditure was spent on the active measures in 2005.

From the supplementary information provided by the Government the Committee notes that the state programme "Professional Education for Employment' has been launched. It will focus on the existing skills mismatch between the unemployed and the labour market requirements. In the framework of this programme two professional education centres were launched with the aim to increase their number up to 50. The Committee notes from the supplementary information that the impact of this programme on the long-term unemployed is not yet known.

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 compliance with this requirement are the types of such measures available on the labour market and their impact on reducing long-term unemployment. The Committee requests that the next report provide this information including the specific measures aimed at the long-term unemployed, the number of people who were involved in training measures and the impact of the Governmental programmes on reducing long-term

unemployment. It also asks how the financial burden of continuing training for the long-term unemployed is shared among public bodies, employers and households.

Finally, the Committee wishes to know whether equal treatment with respect to access to training and retraining for long-term unemployed persons is be guaranteed to the nationals of other States Parties lawfully resident or regularly working in Georgia.

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

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

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

The Committee takes note of the information provided in Georgia's report and the additional information sent by the Government at the Committee's request. However, this information does not enable it to assess the situation.

*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 observes that Act No. n° 756-bis of 15 June 1995 on social security for people with disabilities and Article 14 of the Constitution on non-discrimination provide a general legal framework on social integration of persons with disabilities and their judicial protection in case of discrimination. The Committee asks for the next report to provide information on the existence of any anti-discrimination legislation covering the spheres cited above, as well as its content and any judicial or non-judicial remedies that it provides for in the event of discrimination, along with a description of any relevant case-law.

The Committee also asks whether integrated programming is applied by all authorities involved in the implementation of the policy for persons with disabilities.

*Consultation*

The Committee asks whether organisations representing the interests of people with disabilities are regularly consulted in the design, review and implementation of measures for persons with disabilities.

*Forms of economic assistance empowering persons with disabilities*

The Committee asks for the next report to provide details on benefits and other forms of financial assistance available to persons with disabilities.

*Measures to overcome barriers*

Technical aids

According to the report, people with disabilities are entitled to orthopaedic prostheses, wheelchairs, hearing aids and other 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, blind people have access to written material in Braille and information recorded on sound media to help them improve their level of knowledge and get them more involved in public life. As to measures taken to promote access to the media and new information and communication technologies, they are also given computers with which they can write in Braille.

Under section 5 of the Act on social security for persons with disabilities, the state regards sign language as an official means of communication. On working days 15-minute bulletins in sign language are broadcast on television.

Mobility and transport

In 2003, the Ministry of Town Planning and Construction laid down new rules and regulations for the construction of public buildings and disabled access to them. The Committee asks what arrangements have been made for the implementation of these rules and regulations and how disabled access to public transport (by road, rail, air and sea) 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

Newly introduced regulations in construction sphere were approved by the Government. It provides for physical access of the persons with disabilities to any building with public access. 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 – The 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 Georgia's report.

*Work permits*

The conditions for the entry, residence and exit of foreign nationals are laid down by the Act on the Legal Status of Foreign Nationals (referred to hereinafter as "the Act"). Although the Act refers to "work permits", in section 11 on visa application procedures, the report states that in practice, foreign nationals wishing to engage in a gainful occupation in Georgia do not need such a document; the Georgian authorities do not issue work permits. The Committee notes, however, that foreign nationals wishing to reside in Georgia for more than ninety days must have a residence permit (section 19 of the Act).

There are two types of residence permit:

– the temporary residence permit, which is issued for up to six years and may be applied for, *inter alia*, by persons engaging in a gainful occupation as employees or as self-employed workers in Georgia;
– the permanent residence permit, which may be applied for, inter alia, by foreign nationals who have been residing legally in the country for at least six years and by highly qualified experts and scientists, sports people and artists, whose residence will be of benefit to the country.

In view of the fact that applications for a temporary residence permit may be made from the worker's country of origin (on this point the Committee refers to its conclusion under Article 18§2), the Committee infers that the expression "persons engaging in a gainful occupation" includes foreign nationals who have found an employer in Georgia while still in their country of origin and those wishing to move to Georgia to begin a self-employed activity. The Committee asks for confirmation of this point. It also asks whether foreign nationals are able to enter the country on an ordinary visa, find a job

or begin a self-employed activity and then ask for a temporary residence permit.

It also asks for information on trends in migration flows to Georgia from various States Parties.

*Relevant statistics*

As work by foreign nationals is not governed by a permit system, there are no statistics on the subject.

As for residence permits, according to the report, a total of 1,073 applications have been registered in 2006. 171 of them were rejected, which constitutes 16% of total applications.

The Committee asks the next report to provide for data related to the entire reference period so that the Committee can better assess the tendency of the number of applications and what proportion of these have been rejected. Bearing in mind that a residence permit is required for periods of residence of more than ninety days, the Committee asks for the next report to include figures on applications for the granting and renewal of residence permits for reasons of work made by nationals of States Parties and numbers of rejections and approvals.

*Conclusion*

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

*Paragraph 2 – Simplifying existing formalities and reducing dues and taxes*

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

*Administrative formalities*

Issue of work permits / Work permits and residence permits

The Committee refers to its conclusion under Article 18§1, in which it notes that Georgia does not have a work permit system. It reiterates,

however, that under the Act on the Legal Status of Foreign Nationals (hereinafter "the Act"), persons residing in Georgia for more than ninety days require a residence permit.

Applications for a residence permit, whether temporary or permanent, may be made to the Ministry of Justice or to the Georgian diplomatic or consular representation in the worker's country of origin if the applicant is still abroad.

The Committee asks for more information on the different formalities for obtaining a residence permit, particularly the documents required, depending on whether the application is made in Georgia or the foreign worker's country of origin.

Renewal of residence permits

Under section 19 of the Act, conditions for the renewal of a temporary residence permit are the same as those that apply when it is first issued. The Committee asks whether this means in effect that when foreign nationals apply for renewal they must have a job or be self-employed.

Waiting times

Under section 22 of the Act, temporary residence permits must be issued or renewed within thirty days of the date of the formal application. The time limit is extended to three months for the issue or renewal of a permanent residence permit. The Committee considers these times to be reasonable. It asks, however, for the next report to provide as much information as possible on actual waiting times in practice.

*Chancery dues and other charges*

In reply to the Committee, the report underlines that the fees charged for obtaining temporary residence permits amounts to 180 laris (GEL, which is approximately € 89) and to 60 GEL for permanent residence permits (about € 30).

*Conclusion*

The Committee concludes that the situation in Georgia is in conformity with Article 18§2 of the Revised Charter.

*Paragraph 3 – Liberalising regulations*

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

The Committee points out that the conditions for the entry, residence and exit of foreign nationals are laid down by the Act on the Legal Status of Foreign Nationals (referred to hereinafter as "the Act"). On this point the Committee refers to its conclusions under Article 18§§1 and 2.

The Committee also notes that sections 27 and 31 of the Act establish the principle of equal treatment of Georgian and foreign nationals, with the result that the latter have the same rights and duties as Georgians except where the law provides otherwise, and the right of foreign nationals to engage in a gainful occupation.

*Access to the national labour market*

The Committee notes that under section 23 of the Act, one of the main reasons for which an application for a residence permit can be rejected is that the applicant constitutes a threat to law and order, safety or public health. The same applies where the applicant does not have the necessary means to support him or herself. The Committee asks for information on the practical application of these criteria.

It also notes that applications for residence permits may be rejected in other cases prescribed by the law. It asks what these other cases are.

*Exercise of the right to employment*

According to the report, there are no general restrictions on the right of foreign nationals to engage in a gainful occupation. However, some public service activities – in the civil service and the military – and some jobs in the state security services are reserved for Georgian nationals. The Committee asks for the next report to provide a full list of activities reserved for Georgian nationals and the reasons for excluding foreign nationals from them.

*Consequences of loss of job*

Under section 25 of the Act, the Ministry of Justice "may decide to bring an end to a foreign national's residence" because the working or occupational relationship on the basis of which he or she was issued a residence permit has ceased. According to the report, the Ministry of Justice, in practice, will renew the residence permit under the same conditions it was issued.

It notes that foreign workers or entrepreneurs may look for a new job or invest in a new activity until their residence permit expires. In this connection, the Committee emphasises that loss of job should not lead to the withdrawal of a residence permit, thus compelling the worker to leave the country as quickly as possible. In these circumstances, Article 18§3 of the Revised Charter requires the validity of the residence permit to be extended to provide sufficient time for a job to be found (Conclusions XVII-2, Finland).

The Committee therefore asks if there is any draft law to enable the foreign worker who lost his job to stay in the country and look for a new job, while making a request for renewal of its working and residence permits.

*Conclusion*

The Committee concludes that the situation in Georgia is in conformity with Article 18§3 of the Revised Charter.

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

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

Under Article 22 of the Constitution, any person legally present in Georgia is free to leave the country and all citizens are free to return. Restrictions can be made to this right in so far as they are prescribed by the law and are necessary in a democratic society in the interest of national security or public safety, for the protection of public health, for the prevention of crime or for the administration of justice.

According to the report, section 10 of the Act on the right of Georgian nationals to temporary exit from and entry into the country outlines three cases in which citizens may be prevented from leaving the

country or refused a passport or the right to have its validity extended:

– they are required to be present by the judicial authorities (for a hearing or pending enforcement of a sentence);
– they have used false documents to support their application;
– in other situations prescribed by the law.

The Committee considers that Article 22 of the Constitution complies with the requirements of Article 18§4 in so far as it grants a right of exit for Georgian nationals and the restrictions to this right which it authorises are allowed under Article G of the Revised Charter.

As to the provisions of section 10 outlined above, the Committee considers that the first two restrictions are necessary for the administration of justice and the prevention of crime and hence compatible with Article G. However, in the absence of any further details with regard to the "other situations prescribed by the law", the Committee cannot properly assess whether the situation in Georgia is in conformity with Article 18§4 of the Revised Charter.

Consequently, the Committee would like the next report to contain more detailed information on the rules and regulations concerning the exit and entry of Georgian nationals. In this connection, it asks for a full list of situations in which a citizen may be prevented from leaving the country, whether because they are refused a passport or the extension of its validity or through other coercive measures.

*Conclusion*

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

**Article 20 – The 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 Georgia's report.

*Equal Rights*

The Labour Code prohibits discrimination inter alia on grounds of sex in all matters of labour relations (article 2).

Legislation also prohibits gender discrimination in matters relating to vocational education.

Article 20 guarantees equal treatment with regard to social security. Equal treatment with regard to social security implies the absence of any discrimination on grounds of sex, particularly as far as the scope of schemes, conditions of access to schemes, the calculation of benefits and the length of entitlement to benefits are concerned. The Committee asks whether there is equal treatment in matters relating to social security.

The reply to the question posed by the Committee by letter to the Government states that as regards equal pay for work of equal value Georgia has ratified ILO Convention on Equal Remuneration (N0 100) and legislation is in conformity with the provisions of this convention. The Committee asks for further information on the content of the relevant legislation and if the latter permits, in equal pay litigation cases, to make comparison of pay and jobs outside the company directly concerned.

Legislation provides that women who believed they have been subject to gender discrimination may take their case to court. The reply to the question posed by the Committee by letter to the Government states that the issue of the burden of proof in Georgia is regulated according to best international practice. The burden of proof is shared among the parties. The Committee asks what is the legal basis for this

According to the report discrimination, inter alia on grounds of sex, including unlawful dismissal is an offence under the Criminal Code and may entail a fine or a period of detention. The Administrative

Code also provides that failure to observe labour legislation shall be punished by a fine.

However the Committee asks for information on remedies available to women who have been discriminated against, it recalls that under Article 20 anyone who suffers discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender.

Adequate compensation means:

- reinstatement or retention of employment and compensation for any pecuniary damage suffered in the event of unlawful or unfair dismissal;
- compensation proportionate to the damage suffered, i.e. to cover pecuniary and non-pecuniary damage, where the dismissed employee does not wish to be reinstated or continuation of the employment relationship is impossible;
- in all other cases, bringing the discrimination to an end and awarding compensation proportionate to the pecuniary and non-pecuniary damage suffered.

In accordance with these principles, the Committee considers that compensation should not be subject to an upper limit as this prevents it from being proportionate to the damage suffered and hence adequate.

*Position of women in employment and training*

No information is provided on the position of women in employment and training. The Committee wishes to receive information on the female employment rate, part time rates, and information on any pay gap between women and men.

*Measures to promote equal opportunities*

States must take practical steps to promote equal opportunities. Appropriate measures include:

- adopting and implementing national equal opportunities action plans;

- requiring individual undertakings to draw up enterprise or company plans to secure greater equality between women and men;
- encouraging employers and workers to deal with equality issues in collective agreements;
- setting more store by equality between women and men in national action plans for employment.

As regards the issue of equal pay appropriate classification methods must be devised in order to compare the respective values of different jobs and carry out objective job appraisals in the various sectors of the economy, including those with a predominantly female labour force. Domestic law must make provision for comparisons of pay and jobs to extend outside the company directly concerned where this is necessary for an appropriate comparison.

States must promote positive measures to narrow the pay gap as much as possible, including:

- measures to improve the quality and coverage of wage statistics;
- steps to ensure that more attention is paid to equal pay for women and men in national action plans for employment.

The Committee asks the next report to provide information on all measures taken to promote equal opportunities, including measures taken to ensure equal pay for work of equal value.

*Conclusion*

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

# Chapter 12 – Conclusions concerning Articles 1, 9, 10, 15, 18, 20, 24 and 25 of the Revised Charter in respect of Ireland

## 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. In respect of national reports; it adopts "conclusions in respect of collective complaints, it adopts "decisions.

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

*The Revised European Social Charter was ratified by Ireland on 4 November 2000 and entered into force in the state on 1 January 2001. The time limit for submitting the fifth report on the application of this treaty to the Council of Europe was 31 October 2008. Ireland failed to submit it.*

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

– 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).

Ireland has accepted all these articles.

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 Committee notes the failure of Ireland to respect its obligation, under the Charter, to report on the implementation of this treaty within the deadline. Under the circumstances the Committee was unable to reach any conclusions in respect of these provisions during the supervision cycle.

The Committee recalls that in its previous examination of the above-mentioned articles, it concluded that the situation in Ireland was not in conformity with the Revised Charter in respect of the following provisions:

Article 1§2: 1) There are upper limits on the amount of compensation that may be awarded in discrimination (with the exception of gender discrimination cases) cases; and 2) the excessive length of compulsory service may be required of army officers (Conclusions 2006).

Article 1§4: Access to vocational guidance for nationals of the other States Parties which are not members of the European Union is not guaranteed (Conclusions 2007).

Article 9: Access to vocational guidance for nationals of the other States Parties which are not members of the European Union is not guaranteed (Conclusions 2007).

Article 10§1: Indirect discrimination suffered by nationals of other States Parties due to the length of residence requirements for access to higher education (Conclusions 2007).

Article 10§3: Indirect discrimination suffered by nationals of other States Parties lawfully resident or working regularly in Ireland since

they are probably more affected than Irish nationals due to the length of residence condition for access to continuing vocational training (Conclusions 2007).

Article 10§5: Nationals of other States Parties lawfully resident or working regularly in Ireland are not treated equally with respect to fees (non-EU nationals) and financial assistance (EU and non-EU nationals) (Conclusions 2007).

Article 18§2: Existing formalities in respect of the issuing and renewal of work permits were not simplified, during the reference period (Conclusions 2007).

Article 18§3: Absence of measures to liberalise the regulations governing the employment of foreign workers (Conclusions 2007).

Moreover, in respect of 5 provisions (Article 10§4, Article 15§3, Article 18§1, Article 24 and Article 25) the Committee has not been able to reach a conclusion pending receipt of further information or due to the absence of a report.

The next Irish 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.

# Chapter 13 – Conclusions concerning Articles 1, 9, 10, 15, 18, 20 and 24 of the Revised Charter in respect of Italy

## 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 Italy on 5 July 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 Italy submitted it on 28 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).

Italy has accepted all these articles with the exception of Article 25.

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 24.

The present chapter on Italy concerns 19 situations and contains:

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

In respect of the 6 other situations concerning Articles 1§1, 1§4, 9, 10§4, 15§1 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 Italian 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 Italy's report.

*Employment situation*

The Committee notes that, according to Eurostat, growth in Italy accelerated during the reference period (to 1.9% in 2006, whereas it was 1.2% in 2004).

The employment rate continued its upward trend during the reference period, from 57.6% in 2004 to 58.4% in 2006, as did the female employment rate (from 45.2% in 2004 to 46.3% in 2006). The Committee notes that these rates are still lower than the EU 15 average (66.2% and 58.7% respectively in 2006). It also notes that in 2006 the employment rate for men (70.5%) was still much higher than that for women (46.3%).

The general unemployment rate and the unemployment rate among women continued to decline, the former from 8% in 2004 to 6.8% in 2006, and the latter from 10.5% in 2004 to 8.8% in 2006. The Committee notes that these rates are now lower than the EU 15 average (7.7% and 8.5% respectively in 2006).

On the other hand, however, although the youth unemployment rate (among 15-24 year-olds) and the long-term unemployment as a percentage of total unemployment also declined (to 21.6% and 49.6%, respectively, in 2006), they were still significantly higher than the EU 15 average (15.7% and 42.1% in 2006, respectively).

According to the report, immigrants accounted for 5.9% of the total working population in 2006 (5.2% in 2005) although the figured varied between regions (7% in the north and centre and 2.5% in the south). The employment rate of foreigners was about 67.5% during the reference period while the unemployment rate was 8.6%.

It is estimated that in 2005 there were 526,000 people of working age with disabilities and that 38.1% of these were in employment.

*Employment policy*

According to the report, national employment policy priorities during the reference period were notably aimed at:

– diversify contract types;
– promote the reintegration of unemployed people and disadvantaged groups.

During the reference period, priority was again given to disadvantaged groups (the long-term unemployed, women, workers over 45 threatened with redundancy, low-income workers and benefit claimants). Several programmes were launched to encourage their reintegration into the labour market, including the PARI programme and projects launched in several different municipalities. The report describes a number of measures that have been taken to encourage firms to take on new staff, particularly reductions in social contributions.

These active measures are combined with a number of passive measures. Unemployment benefit has been extended to other categories of disadvantaged workers. Special allowances are also paid in the event of company closure or the need for retraining to support low-income workers. The Committee asks the next report to specify what categories of disadvantaged workers benefit from unemployment benefit.

Other schemes are intended to keep workers over the age of 45 in work by converting their full-time posts into part-time ones, thus allowing young unemployed people to be taken on. Bearing in mind the still relatively high unemployment rate among young people, the Committee can find no other information in the report about measures to combat youth unemployment. In case such measures exist, it asks for corresponding information to be included in the next report.

As to the employment of women, the report describes incentives to establish part-time working arrangements and other measures designed to reconcile work and private life.

According to the report, there are still three times more jobseekers in southern Italy than in northern Italy. The Committee asks what steps are planned to reduce this gap.

It previously (Conclusions 2006) asked for information on the outcome of measures intended to promote the employment of workers with disabilities and help women to return to work, and measures taken in favour of older workers. In the absence of a reply, the Committee repeats its request.

It asks for the next report to include details of the total number of participants in active measures and the activation rate of unemployed persons. It also asks again 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 and was the equivalent in 2006 of 1.3% of GDP. This is below the EU-15 average, which was 2% of GDP in 2006. The portion devoted to active measures also remained stable and represented 0.4% of GDP in 2006.

*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 Italy'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).

As with other states that have accepted Article 15§2 of the Revised Charter, the Committee will examine Italy's legislation banning discrimination based on disability under this provision. Similarly, for states such as Italy 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 Article 3 of the Constitution states that all citizens are equal before the law with no distinction based on sex, race, language, religion, political opinions or personal or social circumstances. Moreover, legislative decree 215/2003 prohibits discrimination in employment on grounds of race or ethnic origin, and legislative decree 216/2003 implementing Council Directive 2000/78/EC of 27 November 2000, prohibits discrimination in employment on grounds of religion, personal convictions, disability, age and sexual orientation.

The report acknowledges that although more attention is paid to discrimination against older persons, the notion of discrimination based on age also concerns young persons, particularly in connection with prejudices and stereotypes regarding their economic capacities, their professionalism and their sense of responsibility.

The Committee takes particular note of the activities of the national anti-racial discrimination office to promote equality in employment by combating discrimination at work based on race and ethnic origin. A memorandum of understanding has been signed with trade unions and employers' organisations setting out a programme of measures to prevent and combat racial discrimination in the workplace and training has been organised on this subject for officials of employers' organisations and managers in the private sector. However, the report does not mention any measures to promote equality in employment without discrimination based on religion, age, sexual orientation or political opinions. It asks for information in the next report concerning each of these areas and on the cases where differences in treatment are accepted under Article 3§3 of legislative decree 216/2003.

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. It notes that in Italy there is no upper limit to the compensation that may be awarded in cases of discrimination. The amount is left to the courts to decide, having regard to the detriment suffered.

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 Parties 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 posts 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).

The regulation setting out the rules governing access to public service employment and the organisation of recruitment examinations and other forms of recruitment in the public service (DPR 487 of 9 May 1994) prevents nationals of non-European Union States Parties from filling certain public service posts, some of which are unrelated to national security or the exercise of public authority for the protection of law and order. The Committee considers that this regulation places excessive restrictions on access to public service employment for nationals of States Parties, and thus constitutes discrimination against them on grounds of nationality, in breach of Article 1§2 of the Revised Charter.

2. Prohibition of forced labour

The Committee finds that Italy is still not in conformity with Article 1§2 of the Revised Charter because articles 1091 and 1094 of the Navigation Code provide for criminal penalties against seafarers and civil aviation personnel who desert their post or refuse to obey orders, even in cases where the safety of the vessel or aircraft or of the persons on board are not at risk. According to the report, such penalties will only be imposed if the action poses a safety risk. The Committee has ruled that simply not applying provisions that are incompatible with Article 1§2 of the Revised Charter is not sufficient to ensure compatibility. It concludes that the situation is incompatible with Article 1§2 because the Navigation Code provide for criminal penalties against seafarers and civil aviation personnel who desert their post or refuse to obey orders, even in cases where there is no threat to the safety of the vessel or aircraft or of the persons on

board, thus constituting excessive coercion to work. The Committee notes that proceedings are currently under way to amend the relevant articles of the Navigation Code. It asks for information in the next report on how the situation has developed.

*Prison work*

According to the report, work is only obligatory for convicted offenders after a final judgment and persons subject to security measures in so-called agricultural and labour colonies (*colonia agricola* and *casa di lavoro*). Prison work is remunerated according to the quantity and quality of work carried out and the nature of the work in question. It may not be less than two-thirds of the remuneration of ordinary employees as provided for in the relevant collective agreements. Prisoners enjoy the same working hours and insurance and social security coverage as ordinary employees. The main types of work are the manufacture of clothing and furniture. Prisoners with the relevant skills may be exempted from ordinary work and be permitted to undertake craft, intellectual or artistic activities on their own behalf. The report points out that work is in fact a privilege because under present prison conditions it is only possible to offer work to a little over 20% of prisoners.

Work for private employers outside the prison is possible, with the approval of the judge responsible for the execution of sentences. The Committee has ruled that under Article 1§2 of the Revised Charter, prisoners may only work for private employers if they have given their consent. Despite the Committee's request, the report does not state whether prisoners' consent is required. The Committee therefore again asks whether prisoners' agreement is required before they can work for private employers. It also asks for clarification of what is meant by agricultural and labour colonies (*colonia agricola* and *casa di lavoro*), and what forms of work obligations they can impose.

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, according to the report, there is nothing in Italian anti-terrorist legislation to prevent persons from carrying out certain activities.

*Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 1§2 of the Revised Charter for the following reasons:

– foreign nationals' access to public service employment is excessively restricted and constitutes discrimination on grounds of nationality;
– the Navigation Code provides for criminal penalties against seafarers and civil aviation personnel who desert their post or refuse to obey orders, even in cases where there is no threat to the safety of the vessel or aircraft, thus constituting excessive coercion to work.

*Paragraph 3 – Free placement services*

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

It notes that a reform of the public employment services is still being carried out.

As a result of the first stage of this reform, which was completed with the adoption of the Biaggi Act of 14 February 2003, placement services have been extended to a larger number of intermediaries in the public sector (where intermediary work is carried out by municipalities, secondary schools and universities) and the private sector (where it is mostly carried out by temporary employment agencies or higher education institutes).

All agencies must be entered in a special register held by the Ministry of Labour and Social Policies. There is also a specific regional certification system. The Committee asks to be kept informed of progress in the implementation of this reform.

According to the report, the number of vacancies notified to the employment services decreased from 115,340 in 2005 to 110,873 in 2006.

The Committee has asked repeatedly (in Conclusions XIV-1, XV-1, 2002 and 2006) for information on:

– the placement rate, that is placements made by the public employment services as a percentage of the total number of persons recruited on to the labour market;
– 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.

The Committee has underscored that these figures are indispensable in order to assess the real effectiveness of employment services and if it does not have them, there is no evidence that the right to free employment services is guaranteed in practice. In the absence of this information, the Committee can only reiterate its conclusion of non-conformity.

The report states that until the reform of the placement system has been completed and the relevant powers have been transferred to the regions, it is still impossible to provide these figures. The average time required to fill a vacancy during the reference period was 36 days.

The Committee also asks for up-to-date information in the next report on the total number of staff in the public employment services.

It would also like to know under what conditions jobseekers are given access to private placement services and, in particular, whether these are fee-paying.

It notes that employees' and employers' representatives are involved in the management of employment services at both national and local level.

*Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 1§3 of the Revised Charter on the grounds that the Government has not 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 Italy's report.

As Italy 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 vocational training of adult workers (Article 10§3) is in conformity with the Revised Charter. However, it has deferred its conclusion on vocational guidance (Article 9) and training for persons with disabilities (Article 15§1), as it needs further information in order to assess the situation.

*Conclusion*

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

**Article 9 – The right to vocational guidance**

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

Vocational guidance, which is an exclusive responsibility of the regions, was reformed under Act 53/2003. One of the main features of this reform was that it opened up vocational guidance to a number of new partners and service providers, including private ones, in both the education system and the labour market.

As Italy 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 main guidance services in the education system are provided in schools and universities. However the regions in the south are significantly less well served by the school and university system in terms of the direct provision of information and guidance than those of the north (35.9% compared with 40.8% for the central regions and 46.9% for the northern one). The Committee asks whether measures are planned to improve services in the southern regions.

b. Expenditure, staffing and number of beneficiaries

In the absence of information in the report, the Committee asks for the next report to provide detailed information on the resources, staffing and number of beneficiaries of vocational guidance in the education system. If the next report does not provide the necessary information, there will be nothing to show that the situation in Italy is in conformity with Article 9 of the Revised Charter.

*Vocational guidance in the labour market*

a. Functions, organisation and operation

The Committee refers to its previous conclusion (Conclusions 2007) for a general description of the vocational guidance system in the labour market.

The reform of the public employment service is now operational. Of the employment centres, 84.5% are now equipped, in a more or less structured fashion, with a guidance service. These centres co-operate with other bodies, such as regional training centres.

In the absence of information, the Committee asks whether certain guidance services are aimed more specifically at the long-term unemployed.

b. Expenditure, staffing and number of beneficiaries

There are 536 employment centres in Italy. The proportion of specialist staff in these centres rose from 56.7% in 2004 to 69% in 2005-2006.

In the absence of information in the report, the Committee asks for the next report to provide detailed information on the resources, staffing and number of beneficiaries of vocational guidance in the labour market. If the next report does not provide the necessary information, there will be nothing to show that the situation in Italy is in conformity with Article 9 of the Revised Charter.

*Dissemination of information*

Most employment centres (68.7%) are equipped with information systems and data bases. Ways are being developed of enabling users to complete certain guidance service documents, for example with civil status data, on line. Certain regional employment centres have installed touch screens for consulting updated lists of job offers in real time.

*Equal treatment of nationals of the other States Parties*

The Committee notes that there has been no change in the situation that it has already found (Conclusions 2003) to be in conformity with the Revised Charter

*Conclusion*

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

## Article 10 – The 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 Italy's report.

*Secondary and higher education*

The Committee notes that the situation which it has previously (Conclusions 2007) found to be in conformity, has not changed. It notes further a number of legislative developments, such as the Agreement of 5 October 2006 signed between the Ministers of Education, Labour and Social Security, regions and autonomous provinces of Trento and Bolzano concerning the definition of minimum standards of training and technical and professional competences.

The Committee notes that 76,000 vocational training courses have been put in place in regions in the course of 2004/5.

*Measures to facilitate access to education and their effectiveness*

According to the report of the persons who obtained *maturita* 74.3% entered universities. University enrolment rate has risen from 55.5% in 2002/3 to 59.1% in 2005/6. Besides, the number of *laurea* diplomas has more than doubled since 2000 and amounted to 301,298 in 2005/6.

In 2005 the public spending on education and vocational training amounted to 4.52% of GDP and to 9.35% of overall public expenditure.

The Committee notes that nationals of other States Parties lawfully resident or regularly working in Italy and wishing to follow vocational training in Italy enjoy equality of treatment with Italian nationals.

*Conclusion*

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

*Paragraph 2 – Apprenticeship*

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

In its previous Conclusion (Conclusions 2007) the Committee took note of the organisation and functioning of the apprenticeship system and found that it was in conformity with the Charter. In addition in takes note of the new measures and instruments at regional level which form part of the overall reform of the apprenticeship system. The Committee wishes to be kept informed about the practical implementation of these instruments.

In response to the Committee's question, the report indicates that there are enough apprenticeship places for all candidates. The Committee notes that the average number of apprentices in 2005 amounted to 566,312 persons.

*Conclusion*

The Committee concludes that the situation 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 Italy's report.

*Employed persons*

The Committee notes that 6% of employed people aged 15-64 have followed a vocational training course, i.e. around 1,5 million workers. The report states that with a view to better responding to the demand for vocational training of various population groups steps have been taken to improve the coordination of different actors at local level.

The Committee takes note of initiatives underway at universities, high schools and the fund for training of temporary workers and employment agencies. The latter have financed 30,389 training courses for 186,701 persons in the course of 2005 at a total cost of €107.8 million. In 2006 € 55.7 million have been allocated to training.

As regards the civil service the participation rate in training measures has been recorded at 60 employees per 100.

As regards the continuing training measures financed by enterprises SMEs have shown a declining number of training courses offered whereas in larger enterprises 35% of staff has participated in training measures. Overall in 2006 6% of SMEs and 73% of large companies have organised training. In total in 2005, € 1,500 million were spent by enterprises whereas in 2000 this indicator stood at to € 895 million.

*Unemployed persons*

The Committee notes from Eurostat that the unemployment rate amounted to 7,7% in 2005 and 6,8% in 2006. The EU-15 average in 2006 stood at 7,7%. The Committee asks what the activation rate of unemployed people is – i.e. the ratio between the annual average number of previously unemployed participants inactive measures divided by the number of registered unemployed persons and participants in active measures.

The report states that the equality of treatment is guaranteed to nationals of other States Parties lawfully resident or regularly working in Italy as regards access to continuing training.

*Conclusion*

The Committee concludes that the situation in Italy 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 Italy's report.

In its previous conclusion the Committee asked for information concerning the practical implementation of measures designed for the long-term unemployed, the results achieved and the proportion of unemployed people who have benefited.

The Committee notes from the report that in 2005 the total number of the long-term unemployed decreased by 2.5% compared to 2004. However, the long-term unemployment rate has risen to 48.3% from

47.5% in 2004. The youth long-term unemployment rate also increased to 43.5% compared to 41.9% in 2004.

According to the report the Public Employment Services (SPE) have taken specific measures to fight against long-term unemployment at regional and provincial levels. Provincial administrators prepare specific actions for promoting active employment policy, both through 'preventive' measures (measures designed for the new long-term unemployed and those at risk of becoming such) and 'curative' (measures designed for all long-term unemployed persons). The Committee wishes to be informed about the concrete results of such measures.

The Committee recalls that the according to Article 10§4 the states should fight long-term unemployment through retraining and integration measures. The main indicators of conformity with this provision are the types of training and retraining measures available on the labour market, the number of persons in this type of training, the special attention being given to young long-term unemployed, and the impact of the measures on reducing long-term unemployment. The Committee requests that the next report provide information on the vocational training measures specifically designed for the long-term unemployed, the number of persons having participated in these measures and having found employment afterwards.

*Conclusion*

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

*Paragraph 5 – Facilities*

The Committee takes note of the information provided in the Italian report.

*Fees and financial assistance (Article 10.5 a and b)*

The Committee takes note of the information concerning financial aid to students based on economic and aptitude criteria, as well as regional scholarships and university grants. In notes that the situation which it has previously (Conclusions 2007, Italy) found to be

in conformity with the Revised Charter has not changed. It further observes that the regional spending on scholarships for the academic year 2004-2005 amounted to € 386,831,482. The Ministry of Universities and Research establishes the minimum level of scholarships for each academic year. In 2006-2007 these scholarships amounted to € 4,360 for non-resident students, € 2,404 for commuting students and € 1,643 for resident students.

*Training during working hours and efficiency of training (Article 10.5 c and d)*

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

*Conclusion*

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

**Article 15 – The 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 Italy's report.

The Committee notes that the figure the report gives for the number of disabled persons is based on the same data as were available when the previous report was drawn up, namely a 2004-2005 ISTAT survey, according to which there were 2,609,000 people with disabilities (not including children under 6 years of age).

It is also stated in the report that it is possible to calculate by extrapolating official school statistics that some 42,460 of the children between the ages of 0 and 5 have a disability.

*Definition of disability*

According to the report, there has been no change in the criteria for a person to be considered disabled set by Framework Act No. 104/92 on social integration and the right of persons with disabilities. The Committee therefore refers to its previous conclusion on this point (Conclusions 2007), and repeats its request for information on the impact of the programme launched in 2004 by the Ministry of Labour and Social Policies, whose aim was to train the persons involved in applying the definition of people with disabilities in the light of the definition adopted by the WHO in its International Classification of Functioning, Disability and Health (ICF 2001).

*Anti-discrimination legislation*

Act No. 67/2006 on the legal protection of persons with disabilities against discrimination, which came into force on 1 March 2006, supplements the provisions of Act No. 104/92 on the social integration and rights of persons with disabilities. The Committee considers that these two Acts are in conformity with Article 15§1 of the Revised Charter from the legal standpoint. Act No. 67/2006 prohibits all discrimination and entitles persons with disabilities to

equal opportunities in all areas of life except employment (which is covered by Legislative Decree No. 216 of 9 July 2003). It also lays down remedies for disabled persons who consider that they have been discriminated against.

The Committee notes that on 21 June 2007 (outside the reference period), a Decree of the President of the Council of Ministers established the criteria for identifying associations or other bodies entitled (under section 4 of Act No. 67/2006) to act with or on behalf of persons with disabilities who consider themselves to have been victims of discrimination.

To determine how Act No. 67/2006 is applied in practice, the Committee asks for more details in the next report on its implementation, particularly concerning the legal protection of children and adults with mental disabilities. In this context, the Committee would also request information on any relevant case-law relating to discrimination on the ground of disability in the education and training sector.

*Education*

In its previous conclusions (Conclusions 2003 and 2007), the Committee noted that, under Act No. 104/92 cited above, children and young people with disabilities were entitled to education in mainstream establishments from preschool up to university level. Mainstreaming is the rule but where it is not possible, special classes have to be organised. The Committee refers to its previous conclusions for a description of the means used to achieve these objectives as, according to the report, they have not changed since.

According to the report, there were 178,220 school pupils with disabilities in 2005/2006 (i.e. about 2% of total pupils) and 83,761 support teachers. The report also states that 9,134 people with disabilities were enrolled at university in 2004/2005 (whereas there were 4,813 in 2000/2001).

The report does not contain any new information on special education. The Committee asks the following questions which it has already put previously (Conclusions 2003):

– Are quality control procedures for special education based on mechanisms used in mainstream schools?

- What types of qualification do special education syllabuses lead to?
- What is the success rate of special education in terms of access to vocational training, higher studies or employment in the ordinary labour market?

*Vocational training*

The Committee noted in its previous conclusion that Framework Act No. 104/92 cited above also entitles people with disabilities to mainstream training. Training must be provided in so far as possible through mainstream courses but, where necessary, special classes may be set up in mainstream establishments.

In reply to the Committee's request for information on vocational training for people with disabilities, the report states that under Act No. 68/99 on disabled persons' right to work, one-year recruitment-oriented work placements (renewable for one year) are organised for people with disabilities. These placements offer a temporary immersion into working life which helps participants make career choices or gives them practical and instructive experience of the day-to-day situation in a company in which it is intended to find them work. Employers are encouraged to offer these placements by the fact that participants may be counted for the recruitment quota for people with disabilities. According to the report, 9.6% of the workers enrolled on the lists described in Act No. 68/99 have taken part in these placements. It is not specified to what year this figure applies. Neither is it stated how many of these people were subsequently recruited. The Committee asks for the next report to contain this information.

*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 Italy's report.

According to the report, there were 526,000 persons with disabilities of working age in 2005 and, of these, 200,000 had jobs. If these figures are compared with those of 2003 (450,772 persons with disabilities of working age and 23,992 in employment), there would appear to have been a huge increase in the employment of persons with disabilities. The Committee asks for some explanation, especially as the report also states that in 2005, 589,543 persons with disabilities were registered on compulsory placement lists but placements had been found for only 32,157 of these. The Committee also notes that these figures do not tally with the information given under Article 15§1, according to which there were over two and a half million persons with disabilities over the age of six in 2004/2005. These inconsistent figures do not enable the Committee to assess the situation in Italy under Article 15§2 of the Revised Charter.

*Anti-discrimination legislation*

According to the report, there has been no change to the legislation examined in the Committee's previous conclusions (Conclusions 2007).

On the subject of Decree No. 216/2003 prohibiting any form of discrimination in employment and training for grounds including disability, the Committee asked whether employers met the requirement to adjust working conditions in practice (reasonable accommodation), whether this requirement had prompted an increase in the employment of persons with disabilities on the ordinary labour market and whether there was any case-law on the reasonable accommodation requirement. According to the report, information on the practical application of this requirement is difficult to obtain, just as it is difficult to determine with any certainty if its introduction has led to an increase in the employment of persons with disabilities in the open labour market. The Committee takes note of these difficulties but repeats its questions.

The Committee also asked in its previous conclusion what penalties there were for employers found guilty of discrimination and if there was any case-law on the subject. The reply given in the report refers to section 3 of Act No. 67/2006 on the legal protection of disabled persons suffering discrimination, under which, where complaints are considered admissible, courts may, of their own accord, both order an end to be brought to the discriminatory conduct and arrange, if

called for by the prosecution, for any damage to be made good, even if the damage is non-pecuniary in nature. The Committee asks, however, if this applies in employment disputes given that section 1§2 of the Act excludes access to employment and labour law from the Act's field of application (see conclusion under Article 15§1). It asks for clarification of this matter in the next report.

*Measures to encourage the employment of persons with disabilities*

The Committee refers to its previous conclusions (Conclusions 2003 and 2007) for a description of measures to promote employment under Act No. 68/99, namely the registration of persons with disabilities on employment office's reserved lists, quotas imposed on employers, financial aid for employers who recruit disabled persons, social co-operatives and integration contracts.

According to the section of the report relating to Article 1§2, a large number of complaints have been filed with the trade union, Federonlus, for discrimination in various occupational sectors. Federonlus has established that about 500 of these complaints are well-founded. Practically all of them relate to employment disputes such as the failure of public and private bodies to meet their statutory requirement to recruit blind telephone operators and different pay for identical work for blind persons recruited on half-time contracts and persons with limited abilities. The Committee asks what steps are planned to improve the situation.

The Committee also takes note of judgment no. 180203 of 21 August 2006 by the Labour Division of the Court of Cassation, which established that when organising their companies, all employers are required to create posts to which they can assign unskilled workers covered by the compulsory placement provisions of Act No. 68/99. In this context, the Committee notes that the Government is not in a position to state how many firms meet quota requirements. The Committee asks for the next report to explain how compliance with this requirement is monitored and state whether it is planned to take steps to improve the situation.

When deferring its previous conclusion, the Committee asked for detailed information on the number of persons with disabilities employed in the ordinary labour market and the number of those in sheltered employment.

With regard to the total number of persons with disabilities in employment, the Committee refers to its request for clarification above. It also notes that according to the report, it is impossible to make an estimate as to the number of persons with disabilities in sheltered employment. Neither does the report give any indication as to the rate at which workers with disabilities are moving from sheltered employment to the open labour market. The Committee therefore repeats its request for these figures along with information on measures taken or planned to facilitate the transfer from sheltered employment to ordinary work. It also repeats its question on the role of trade unions in sheltered employment. In the absence of all the necessary information, it has not been shown that the situation in Italy is in conformity with Article 15§2 of the Revised Charter.

*Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 15§2 of the Revised Charter on the ground that it has not been established that persons with disabilities are guaranteed 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 the Italian report.

*Anti-discrimination legislation and integrated approach*

Act 67/2006 on the legal protection of disabled persons suffering discrimination, which came into force on 1 March 2006, supplements the provisions of Act 104/92 on the social integration and rights of persons with disabilities. In its last conclusion (Conclusions 2007), the Committee found that these two statutes offered disabled persons sufficient protection from the standpoint of Article 15§3 of the Revised Charter. Act 67/2006 prohibits all discrimination and entitles persons with disabilities to equal opportunities in all areas of life except employment (covered by Legislative Decree 216 of 9 July 2003). It also lays down remedies for disabled persons who consider that they have been discriminated against.

To determine how Act 67/2006 is applied in practice the Committee asks for more details in the next report on its implementation, particularly concerning the legal protection of persons with disabilities in such specific areas as housing, transport, telecommunications and cultural and leisure activities.

Turning to the formulation by the authorities of policies on behalf of disabled persons, the report says that Framework Act 328/2000 covers several institutional tiers – national, regional, provincial and local – and is based on the principle of integrated planning, decentralisation of activities and promoting public-private partnerships in the management of different forms of provision.

*Consultation*

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

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

In answer to the Committee, the report describes all the benefits and other forms of financial assistance to which persons with disabilities may be entitled:

– incapacity for work pensions are paid to employees and self-employed persons with a physical or mental infirmity. The infirmity must make it totally and permanently impossible to carry out any work whatever;
– personal and continuing allowances entitle holders of incapacity for work pensions to support if they are unable to walk without the permanent support of an accompanying person or need continuous assistance. Since 1 July 2006, the assistance allowance has been € 422.19 per month;
– invalidity allowances are paid to employees and self-employed persons with a physical or mental infirmity that leads to a permanent two-thirds reduction in their ability to perform work corresponding to their skills. The allowance may not exceed the minimum guaranteed wage (€ 436.14 in 2007);
– civil invalidity pensions are social assistance benefits, in the form of pensions, allowances and other payments, paid to

civilian disabled persons suffering total or partial invalidity and blind persons who have an insufficient or non-existent personal income. The monthly pension varies between € 242 and € 703;
– attendance allowances are paid to persons with 100% disability requiring continuous assistance. In 2006, the allowance was € 450.78 per month.

*Measures to overcome obstacles*

Technical aids

The report updates the information on technical assistance available. Disabled persons and persons with financial responsibility for them are eligible for tax deductions for expenditure occasioned by the purchase and upkeep of guide dogs for the blind, and the cost of interpretation services. In addition, disabled persons requiring technical assistance to compensate for functional disabilities resulting from motor, visual, auditory or linguistic impairments are also entitled to a reduced rate of VAT of 4%.

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, in addition to the tax deductions described in the report. 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 report says that so far no official recognition has been granted to sign language. The Government has approved draft legislation to promote the full participation of deaf persons in the life of the community. This would recognise and encourage the acquisition and use of Italian sign language by deaf persons, including the use of

available information and communication technologies. The Committee asks for information in the next report on the application of this legislation.

Mobility and transport

In the context of access to public and private buildings, there are tax reductions for expenditure on building work to eliminate architectural barriers. The Committee notes that Framework Act 104/92 establishes an obligation to make buildings and sports and recreational facilities accessible. It again asks to what extent this obligation is complied with.

The report sets out all the measures taken to improve disabled persons' access to road, rail and air transport, such as lifting facilities, facilities for the purchase of tickets and reduced prices for disabled persons and those accompanying them.

Housing

Act 13/89 on the removal of architectural barriers in private buildings authorises the central and regional governments to make non-repayable contributions for the adaptation of housing. The amount is determined by the cost of the work involved, with a minimum contribution of € 2 582, which may then rise as a percentage of the total cost. In addition, persons making tax returns are entitled to an allowance of 41% of the expenditure arising from rehabilitation work, ordinary and extraordinary maintenance and the removal of architectural barriers. The Committee asks how many persons have benefited from this contribution and what progress has been made to improve access to housing.

Culture and leisure

The report describes recent initiatives to involve persons with disabilities in sporting activities, in accordance with Act 189/2003 on rules for promoting sport among disabled persons. Several Italian towns and cities have also adapted numerous cinemas to make them accessible to disabled persons. Finally, a project entitled "social tourism" organises mountain and seaside holidays adapted to the needs of persons with disabilities.

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 access to them, prices, adaptation of programmes and so on.

*Conclusion*

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

**Article 18 –The 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 Italy's report.

*Foreign population and migratory movements*

The Committee notes from another source[1] that on 31 December 2005, there were 2,670,500 foreign nationals in Italy (compared to 1,503,000 in 2002), which represented 4.6% of the total population, and were made up mostly of Romanian, Albanian and Moroccan nationals.

*Work permits*

The Committee points out that apart from nationals of the parties to the Agreement on the European Economic Area, foreign nationals wishing to undertake gainful employment in Italy require a "residence permit for the purposes of work".

The Committee notes that, after the enlargement of the European Union in May 2004, Italy decided to apply transitional measures on access to the labour market to the citizens of all the new member states apart from Cyprus and Malta. On 27 July 2006, the Italian Government informed the European Commission of its decision to stop applying these transitional measures, thus opening up the Italian labour market to all the nationals of the new member states. Following this decision, the formalities for obtaining employment authorisations for the recruitment of workers from these states were discontinued with immediate effect.

*Relevant statistics*

The report states that the rejection rates for first-time and renewal applications for "residence permits for the purposes of work" cannot

[1] OECD, Trends in International Migration, Sopemi, 2006 edition.

be provided. The Committee notes however that there are some statistics in the report concerning employment authorisations: of the 390,000 applications for employment authorisations lodged in 2005, about 358,000 were considered and 243,000 were granted, meaning that the rejection rate was 32%.

The Committee points out that its assessment of the degree of liberality is based on figures showing refusal rates for work permits for first-time and renewal applications (Conclusions XVII-2, Spain). It would also point out that it previously (Conclusions 2006) came to a conclusion of non-conformity because of the lack of such data in two successive reports. In the absence of information, the Committee reiterates its conclusion of non-conformity.

The Committee asks for the next report to provide up-to-date statistics broken down according to country of origin, on "residence permits for the purposes of work" applied for, issued, refused and renewed for all nationals of States Parties.

*Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 18§1 of the Revised Charter as it has not been established that the regulations governing the right to engage in a gainful occupation are applied in a spirit of liberality.

*Paragraph 2 – Simplifying formalities and reducing dues and taxes*

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

*Administrative formalities*

Issue of residence permits for the purposes of work

Paid employment

The Committee notes that according to the report, the procedure for issuing residence permits for paid employment has not changed. For a detailed description of the formalities, it refers to its previous conclusion (Conclusion 2007). It recalls, however, that such permits cannot be issued until the employer has been granted an employ-

ment authorisation. Once the employment authorisation has been issued, the foreign worker must apply in person to the Italian diplomatic or consular representation in his or her country of residence for an entry visa. Having been granted the visa, he or she must go to the one-stop service which issued the authorisation within eight days of entering the country, to sign the residence contract. The residence permit is issued at the one-stop service after signature of the residence contract. According to the report, the formalities for foreigners already residing in Italy are identical to those described above except that no entry visa is required.

In Conclusions 2007, the Committee took note of the procedure described above but found that the formalities to obtain a residence permit for paid employment were not sufficiently complex to justify a non-conformity conclusion. Since there has been no change, it maintains its position on this matter. The Committee however asks whether there are plans to liberalise the regulations in this matter.

Self-employment

Permits for self-employment are issued according to the following procedure: The foreign national concerned must begin by filing an application for an entry visa for self-employment to the Italian diplomatic or consular representation in his or her country of residence, along with an authorisation from the relevant Italian police headquarters. To obtain this authorisation, the foreign national must submit a declaration confirming that there is no reason why he or she should not be granted official certification or authorisation to engage in the planned activity. Depending on the type of activity, this declaration may be issued by the Ministry of Justice, the Chamber of Commerce, Industry, Craft Trades and Agriculture or the Ministry of Health. The foreign national must also submit an official document indicating the nature and amount of financial resources required to engage in the planned activity, issued by the Chamber of Commerce or, where the activity requires official certification or authorisation, by the relevant professional association. Once the person concerned has obtained a visa and entered Italy, he or she must file an application for a residence permit for self-employment within eight working days.

It is the Committee's view that the requirement for an authorisation calling for the involvement of numerous local bodies cannot be regarded as a simplified procedure, especially as foreigners must, in

principle, obtain this authorisation before arriving in Italy, that is to say while they are still in their country of residence (see, *mutatis mutandis*, Conclusions 2003; a procedure which requires the involvement of three different ministries to process a simple work permit application cannot be regarded as a simplified procedure). If the rules on this subject are not simplified, the Committee has no choice but to reiterate its conclusion of non-conformity on that ground.

Work and residence permit

Italian legislation provides for a system which merges work and residence permits; migrants may make a single application for both permits and if their application is granted they are issued a residence permit for the purposes of work.

Renewal conditions

Foreign workers must apply for the renewal of their residence permit to the prefecture of the province in which they live before their current permit expires.

Waiting times

Paid employment

The Committee points out that it must take no more than forty days from the date of the relevant application for an employment authorisation to be issued. In the absence of any information on the subject in the report, the Committee asks again for information on the waiting times for entry visas and residence and work permits after the signature of the residence contract at the one-stop service. Without such information, it is impossible for it to judge whether the actual time needed to process applications for “residence permits for the purposes of work” is excessive or not. It also wishes to know what authority is responsible for the issuing of work permits.

Self-employment

The Committee points out that visas for a self-employed activity must be issued within four months. In view of the additional information mentioned above concerning the procedure for issuing residence permits for self-employment, the Committee asks what the average

waiting time is between the filing of the relevant application and the granting of the permit in question.

*Chancery dues and other charges*

According to the report, the fee for initial applications and applications for the renewal of residence permits is € 30. Added to this are charges of € 14.62 for the excise stamp to be affixed to the application and, where renewals are concerned, € 27.50 to cover the cost of printing the new electronic residence permit.

The Committee asks again for the next report to provide information on the charges for foreign nationals wishing to engage in a self-employed activity.

*Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 18§2 of the Revised Charter on the ground that the formalities for granting residence permits to self-employed workers were not simplified.

*Paragraph 3 – Liberalising regulations*

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

*Access to the national labour market*

Access to the labour market for non-EU nationals is authorised in accordance with quotas fixed by ad hoc decrees on migration flows. It notes that the quota was 79,500 in 2005 and 170,000 in 2006.

There are some categories of worker to whom these quotas are not applied. It notes from the report that these include the managers and highly qualified staff of foreign companies, university lecturers, sportsmen and women, journalists and nurses. Preferential quotas may also be adopted by decree for workers from States with which Italy has negotiated agreements on migration flows and readmission procedures (States Parties with which Italy has such agreements are for example Albania and Moldova).

*Exercise of the right to employment*

Foreign workers may change their place of work, but they may be prohibited from residing in certain municipalities or localities for military reasons – a restriction which the Committee has found to be in conformity with Article G of the Revised Charter (Conclusions 2007). Foreigners engaged in self-employed occupations may change their sector of activity provided that they enrol on the lists or the registers of the professional associations relating to their new occupation.

A residence permit for work as an employee may be converted into a permit for self-employed activity provided that the official certifications or authorisations to engage in the activity in question are obtained beforehand and any other conditions prescribed by the law are met. Likewise, residence permits for self-employed workers may be used for work as an employee while they are still valid, once the person concerned has been entered in the population register and, if an employment relationship has already been established, the relevant document has been sent by the employer to the appropriate Provincial Labour Directorate.

The Committee notes that, from their second period of residence in Italy for seasonal work onwards, all foreigners offered a fixed-term or indefinite-term contract may apply to the one-stop service for a residence permit for non-seasonal paid employment, provided that their initial residence permit has not expired and that they fall within the limits of the quotas for foreign workers established every year by the decree on migration flows. In such cases, the persons concerned are not required to return to their country of origin to apply for a new entry visa.

*Consequences of loss of job*

The Committee points out that loss of job, even as a result of resignation, does not entail withdrawal of the related residence permit. Foreign workers may look for a new job by registering on the list of job seekers for the entire period for which their residence permit is valid.

*Conclusion*

The Committee concludes that the situation in Italy is in conformity with Article 18§3 of the Revised Charter.

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

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

In reply to the Committee's question on restrictions connected with military service, the report states that Act No. 226 of 23 August 2004 marked the end of compulsory military service in Italy. Since its entry into force on 1 January 2005, military service has been voluntary.

The Committee has already noted that the right of nationals to leave the country can be restricted by the courts (Conclusions XV-2). It asks for the next report to provide a complete list of practical circumstances in which Italian citizens may be prevented from leaving the country, particularly because of judicial decisions, and their legal basis.

*Conclusion*

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

**Article 20 – The 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 Italy's report.

*Equal rights*

The Committee takes note of the changes in legislation which have taken place during the reference period. A legislative decree of 30 May 2005 transposed Directive 2002/73/EC[1] into domestic law, and in accordance, includes sexual harassment as a prohibited form of discrimination on grounds of sex. Another important legislative change was brought about with a legislative decree of 11 April 2006 on a "Code for Equal Opportunities", which introduces new rules of procedure for legal actions in cases of discrimination. The low number of cases brought to the courts in 2005-2006 makes it impossible to assess these procedural changes for the time being. The legislative decree of 2006 also foresees the possibility for Regional or National Equality Advisers to attempt a friendly settlement with the author of a discriminatory act, clause or behaviour (of a collective nature). In such cases, the Equality Adviser can request that a plan to remove the discrimination be prepared, prior to bringing legal actions.

The report indicates that there is a reversal of the burden of proof in cases when the existence of discrimination can be presumed. The Committee refers to previous conclusions for a more detailed overview of the legal framework on the right to equal treatment between men and women (Conclusions 2006).

As regards the principle of 'equal pay for equal work', the Committee notes that it is enshrined in Article 2 of Act No. 903/1977. This provision also states that occupational classification systems, applied for the purpose of determining remuneration, shall adopt common criteria for men and women. However, the Committee notes from

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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 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

another source[1] that no formalised job evaluation and job analysis systems seem to exist in Italian legal and industrial relationship systems'. It therefore asks for further information on this matter, and whether any measures have been envisaged to ensure neutral and non-discriminatory job classification systems in practice.

The Committee also notes from the above source that there is no legislation or regulations in Italy 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 and support of maternity and paternity the next time it examines Articles 8 and 27.

The report indicates that a number of occupations can be excluded from the principle of equal treatment, namely activities related to the fashion, art and show business sectors, when the sex of the worker constitutes a determining factor. It also indicates that other exceptions are permitted for posts which are particularly difficult, and recognised as such in collective bargaining. With a view to assessing conformity with this part of Article 20, the Committee asks for specific examples of activities which have been excluded from the principle of equal treatment under the clause of 'particularly difficulty'.

*Position of women in employment and training*

The Committee notes from Eurostat[2] that the female employment rate (women aged 15-64) in 2006 was 46.3%, compared to 70.5%

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[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

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

for men. This represents a gender gap of 24.2%, one of the highest for the EU-27 countries.

The female unemployment rate (women aged 15 and over) in 2006 was 8.8%, compared to 5.4% for men.

In 2007, 26.6% of part-time workers in total employment were women, against 4.9% of men.

The share of women employees with temporary contracts was 15.8%% in 2006 while the rate for men was 11.3%.

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 9% in 2006, while the average for EU-27 countries has remained at 15% since 2003. The report provides different figures on the pay gap, indicating that it stood at 23.3%. It also states that some reasons of the pay gap are linked to women working in lower remunerated jobs, but others are the result of discrimination as regards career opportunities and salaries. The Committee wishes to be kept informed on the results of the research on the pay gap currently being undertaken by the Ministry of Labour and Social Security.

*Measures to promote equal opportunities*

The report states that positive action measures in favour of one or the other sex are permitted under Italian law. Some of these measures are financed with public resources.

Public administrations are under a legal obligation of preparing 3-year plans containing positive action measures to achieve equality in practice. For example, administrations must, at the selection or promotion stages, justify the choice of male candidates in sectors and activities where women are under-represented. Sanctions are foreseen to ensure the functioning of the system.

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 Italy 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 Italy's report.

The Committee has examined the valid reasons for termination of employment under Italian law in its previous conclusions (Conclusions 2003 and 2007). It held that the lack of protection against dismissal for domestic employees went beyond the provisions of the Appendix to Article 24. It also considered that the exclusion of employees on a probationary period was in violation of Article 24 as the six months trial period does not depend on the qualifications of the employee. There has been no change to the situation and the Committee thus reiterates its finding that the situation is not in conformity with Article 24 in this respect.

The Committee had further noted that employees who are aged 60 or over and are entitled to an old age pension are excluded from protection against dismissal. It 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. The Committee asks the next report to provide information on whether and how the legal framework complies with this approach. It notes in this context from the report that Italy has implemented Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation[1] and asks for information on the content of the applicable rules of national law in this respect.

The Committee had also observed that professional athletes were not protected against dismissal and asked for further information on this situation, including information as to who is covered by such a definition and what are the reasons for the exclusion of this category of persons. The report specifies that the notion of professional

[1] Official Journal L 303, 02/12/2000, pp. 16 - 22

athlete does in principle refer to those exercising sportive activities on a competitive basis and as their principal source of revenue. The report further explains that the derogation from the generally applicable protection against dismissal is justified by the specific nature of the sportive competition as well as of the services rendered by professional athletes which make it impossible to transpose the general rules applicable to employment relationships to contracts with professional athletes.

*Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 24 of the Revised Charter on the ground that the categories of workers excluded from the protection against termination of employment are more extensive than those provided for by this provision.

In accordance with Article 21-1§3 of the Committee's Rules of Procedure, a partly dissenting opinion of Mr S. Evju, joined by Ms M. Schlachter and Ms A. Ciampi, members of the Committee, is appended to this conclusion.

**Partly dissention opinion of Mr S. Evju, joined by Ms M. Schlachter and Ms A. Ciampi**

*Conclusion relating to Article 24*

As a part of its reasons for finding that the situation in Italy is not in conformity with Article 24 of the Revised Charter, the Committee again maintains that the exclusion from protection against termination of employment of workers on a probationary period of up to six months and holds this to be unacceptable "as the six months trial period does not depend on the qualifications of the employee". This corresponds to the Committee's stand in Conclusions 2003 and Conclusions 2007 for Italy. In both cases, I dissented and I still take a different view from the majority's opinion. In view of the circumstances, including also my dissenting opinion in the Case of Cyprus Article 24 in the present Conclusions, I consider it appropriate to recall my reasoning on this point.

The Appendix to Article 24 explicitly allows of the exclusion from protection of workers undergoing a probationary period of a qualifying period of employment, albeit with the proviso, *inter alia*, that the period in question is of "a reasonable duration". However, in my opinion a probationary period of up to a maximum of six months cannot in general terms be deemed to be not reasonable within the meaning of the Appendix to Article 24. And within the bounds of what is generally a "reasonable duration" of a probationary period I find the imposition of a requirement of shorter probationary periods for some categories or groups of workers based on the workers' "qualifications" to be unfounded. The notion of "qualifications" has no precise connotation in this context, nor does it render precision as to its implications, and in my opinion it does not take proper account of the Appendix provision and the aims to which it is tuned.

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