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EUROPEAN SOCIAL CHARTER

9th National Report on the implementation of the European
Social Charter
submitted by

THE GOVERNMENT OF THE NETHERLANDS

- Follow-up to Collective Complaints 90/2013, 86/2012, 47/2008
- Complementary information on Articles 4§1 and 26§2 (Conclusions 2014)

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CYCLE 2016

THE EUROPEAN SOCIAL CHARTER

The Netherlands' Twenty-eighth Report

Simplified report 2015

Report

made by the Government of the Netherlands in accordance with Article C of the Revised European Social Charter, on the measures taken to give effect to the accepted provisions of the European Social Charter.

This report does not cover the application of such provisions in the non-metropolitan territories to which, in conformity with Article L they have been declared applicable.

In accordance with Article C of the revised European Social Charter, copies of this report have been communicated to:

- Netherlands Trade Union Confederation FNV
- National Federation of Christian Trade Unions in the Netherlands CNV
- Trade Union Federation for Professionals (VCP)
- the Confederation of Netherlands Industry and Employers (VNO-NCW) and MKB Nederland

In accordance with Article 23 of the Charter, copies of the of this report have also been communicated to the following labour organizations on the Caribbean part of the Netherlands: USIBO / ABVO, FEDEBON, AFBW, WICSU/PSU, BPWU, NAPB, PWFC and SIMABO.

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Report in respect of the Kingdom in Europe

I Information on the follow-up given to the decisions of the European Committee Social Rights relating to the collective complaints

1. Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20/10/2009, violation of Articles 31§2 and 17§1.c.

Answer:

The Supreme Court ruled on 21 September 2012 that the State had an obligation to protect the rights and interests of children in its jurisdiction, including children unlawfully present in the Netherlands.[1] On the basis of this judgment, children – and their parents – are provided with shelter so that they do not find themselves in an urgent humanitarian situation as a result of their parents' decisions. The Supreme Court took the view that children could not be held responsible for their parents' behaviour. With this ruling the Supreme Court supported the view of the Committee of Ministers of the Council of Europe, as laid down in the DCI-Resolution (2010).

The Dutch parliament was informed of this judgment on 24 October 2012. When it is necessary to ensure forced removal families can be placed in the closed family centre, that opened in October 2014. They are only placed here as a last resort to realize return, under strict criteria and for in principle a maximum of two weeks.

Furthermore, unaccompanied minors have a right to shelter until they reach the age of majority.[2] To ensure that proper care is provided, unaccompanied minors will be placed under the care of the Central Agency for the Reception of Asylum Seekers who will place them with a foster family. As a last resort to realize return and only under strict criteria they can be placed in the closed family centre, mentioned above.

See also the 27th report of the Netherlands on the European Social charter for the period 1 January 2010 – 31 December 2013 (Article 31).

2. European Federation of National Organisations Working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 02/07/2014, violation of Articles 31§2, 13§§1 and 4, 19§4(c) and 30

Answer:

On 16 June 2015 the State Secretary for Health, Welfare and Sport wrote to the House of Representatives outlining his views on the resolution and the findings of the Committee.¹ This is on the agenda for parliamentary debate, expected to be scheduled in the autumn of 2015.

The State Secretary made the following points in his letter.

Community shelter services must be seen in the broader context of the tasks and responsibilities given to the municipalities. Under legislation applicable as of 1 January 2015, anyone requiring help with matters relating to income, work or social support (including homelessness) can contact a municipality, which has a duty – and the necessary resources – to

^[1] ECLI:NL:HR:2012:BW5328, consideration 3.7.2.

^[2] Asylum Seekers and Other Categories of Aliens (Benefits) Order.

¹ Parliamentary Papers, House of Representatives, 2014-2015 session, 19367, no. 2012.

give full consideration to such a request and offer appropriate support. Community shelter services may be one aspect of this, but are not always the best solution for someone who, for example, has no or low income and nowhere to live. When examining requests for help and possible solutions, the municipality factors in the clients' ability to help themselves and the resources available within their own social network, as well as looking at other options, such as offering alternative housing. As with all other services available under the Social Support Act 2015 (WMO), municipalities receiving a request for shelter must be able to examine the applicant's own resources or what his or her own social network can offer.

The Committee's conclusion that nationwide access to community shelter services is not adequately guaranteed in practice is consistent with the State Secretary's own findings. This has long been a matter of concern and the House has already been briefed on the subject, for example in a letter dated September 2013, which also outlined the measures to be taken.²

With regard to these measures, a December 2014 progress report on community shelter services³ states that these services must be available right across the Netherlands as a safety net. The implementation practices of municipalities must comply with statutory requirements. This means that members of the public seeking support can contact a municipality that has been designated as a regional authority for shelters (*centrumgemeente*), even if it is ascertained that a support programme in another municipality is more likely to lead to a successful outcome. This does, however, require an effective transfer. Any decisions by the municipality should also guarantee members of the public the legal protection to which they are entitled.

Since then, the Association of Netherlands Municipalities (VNG) and the Dutch Federation of Shelters (*Federatie Opvang*) have organised a number of regional meetings and the guidelines for municipalities and institutions providing shelter have been tightened up. On 31 October 2014 the regional authorities for shelters decided to formalise the agreements contained in the guidelines in a voluntary agreement, which was signed by all municipal executives responsible for community shelter services in these regional authorities.

In addition, a fact sheet and admission criteria have been developed, which will be useful tools for ensuring that the right support measures are taken; the VNG is also working on an instrument to manage the relevant contacts. On the basis of a follow-up survey on nationwide access in practice, to be carried out before the summer of 2015, progress in this area will be assessed and discussions will be held with members of the municipal executives concerned if such access cannot be guaranteed.

It is the responsibility of the municipalities and the regional authorities to provide adequate, suitable shelter for the relevant target groups. The facilities required for a particular group will be different for each municipality and will also depend on how much overall support is available within any given municipality. The State Secretary sees it as his responsibility to call the municipalities, the regional authorities and the institutions providing shelter to account if they fail to offer sufficient facilities or if their implementation practices do not meet the required standards.

If it should come to the State Secretary's attention that the regional authorities are persistently failing to provide enough shelters for women and young people, he would remind them of their responsibility in this area. So far, this has not been necessary. The State Secretary has,

² Parliamentary Papers, House of Representatives, 2013-2014 session, 29325, no. 64

³ Parliamentary Papers, House of Representatives, 2014-2015 session, 29325, no. 70

however, concluded from the Committee's findings that it is crucial to have better statistics on the demand for community shelter services. Regarding the availability of data, as pointed out in the above-mentioned report of December 2014, the completion of the annual Community Shelter Services Monitor conducted as part of the action plan that ended in February 2014 prompted the State Secretary to enter into discussions with the parties concerned about how to build up a proper picture of homelessness at national and local levels and of the reach and impact of the support provided to combat it. The Netherlands Institute of Mental Health and Addiction (Trimbos Institute) is conducting another Community Shelter Services Monitor in 2015, covering 2014. Thereafter, the municipal Social Domain Monitor can be used to generate data on support programmes in terms of numbers and duration. This also reflects central and local government's wish to coordinate monitoring efforts as much as possible, with the exception of the Social Domain Monitor, which remains a municipal task. It has been agreed with the VNG that the possibility of including homelessness statistics in this Monitor will be explored. The Committee's findings are regarded as an extra incentive for reaching a consensus in this area.

Having national capacity statistics on shelter facilities is important, but it is even more crucial to have information about the services currently available at local or regional level and whether supply is perfectly tailored to demand. It has been agreed with the VNG that a regional policy plan for sheltered housing and shelters in the community (known as the 'Compass Approach') will be drawn up later this year for each regional authority. The State Secretary for Health, Welfare and Sport takes the view that this must include a description of the available and required services and has asked the VNG to devote particular attention to this point. The Ministry is subsidising a VNG support programme to facilitate the drafting process.

With regard to quality, the regional authorities for shelters are also primarily responsible for the capacity and quality of the facilities on offer and should reach agreements in this area with institutions that provide shelter. The Social Support Act 2015 does, however, also include quality requirements for providers; section 3.1 requires them to ensure good-quality services and specifies a number of relevant aspects.

In December 2014 the State Secretary announced his intention to support the sector in its efforts to comply with the quality requirements. As part of the aforementioned Compass Approach, the VNG and the Federation of Shelters were therefore asked to develop quality standards for community shelter services, focusing particularly on children and young people. This helped them gain useful experience in shelter services for women and a quality document is now available, which will serve as a guide for defining a basic quality level.

3. Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, decision on the merits of 01/07/2014, violation of Articles 13§4 and 31§2

Answer:

The Dutch government refers to the letter of 22 April 2015, which provides further information on the measures taken in response to the resolution of the Committee of Ministers regarding the report by the European Committee of Social Rights ('the Committee') in the case *CEC v. the Netherlands*. The letter describes the system for the reception and housing of current and former asylum seekers along with the improvements which are currently being developed in close consultation with the municipalities. An English translation of this letter is as follows.

Letter of 22 April 2015 from the State Secretary of Security and Justice, the Minister of Foreign Affairs and the Minister of Social Affairs and Employment to the House of Representatives on the resolution on the Committee of Ministers of the Council of Europe concerning the complaint under the European Social Charter, Conference of European Churches (CEC) v. the Netherlands

As your House was previously informed,⁴ the Council of Europe's Committee of Ministers was scheduled to adopt a decision in Conference of European Churches (CEC) v. the Netherlands (Complaint no. 90/2013) on 15 April 2015 in the framework of the collective complaints procedure of the European Social Charter (ESC). We hereby present the resolution adopted on 15 April 2015 by the Committee of Ministers in relation to this complaint, which brings the procedure to a close. As requested, the government will inform the Committee of Ministers of any further developments.

In response to the report by the European Committee of Social Rights (ECSR), the Committee of Ministers explicitly refers to the limitation of the personal scope of the European Social Charter. The Committee of Ministers does not share the ECSR's findings, since they have no foundation in the Charter. It thus endorses the Netherlands' position that aliens who are not lawfully resident within the territory of a state party do not fall within the scope of the Charter. The Netherlands attaches great importance to this fundamental decision on the Charter's scope, which can only be extended by the contracting parties themselves and not by the ECSR. The decision clarifies that individuals residing unlawfully in the Netherlands are not entitled to the full and comprehensive rights described in the Charter.

At present, it is still open to debate whether international treaties invoked by illegal aliens, such as the European Convention on Human Rights (ECHR), entitle them to reception facilities in certain individual cases, not least in the light of the ECSR's interpretation. The Council of State's judgment on this issue is expected later this year. Regardless of this debate, the government believes there is room for more vigorous efforts in support of return within the current system.

Current system

At present, the Netherlands has a system for the reception and housing of current and former asylum seekers that ensures that no alien in the Netherlands is forced to live on the street.

Under the current system, asylum seekers are offered reception facilities during the asylum procedure. Those granted a residence permit are subsequently placed in local-authority housing. When an asylum application is denied, the alien is granted a fixed period in which to leave the Netherlands (with government support). Aliens who have not done so by the end of this period are placed in restrictive accommodation (VBL) on the condition that they are willing to continue arranging their departure. If an alien is not prepared to leave of his or her own accord, he or she is not placed in a VBL facility and the option of forced return is examined. If forced return is feasible, it is carried out (if necessary by means of detention). If however it is not feasible, and the alien is not willing to cooperate in arranging to depart voluntarily, he or she will end up on the street. If this happens, the alien can re-enter the system at any time by making

⁴ House of Representatives 2014-2015, 19 637 no. 1958 (Letter from the Minister of Security and Justice of 19 March 2015).

arrangements to depart the Netherlands. This enables him or her to be placed in a VBL facility.

In addition to the facilities described above, families with minor children are placed in a family accommodation centre, even if they are not in the process of arranging their departure. This is because children cannot not be penalised for their parents' choices.

The government sees room for improvement in this system, to increase the effectiveness of the return process. The proposed changes are described below.

12-week VBL placement

Under the current system, aliens who from the outset cannot be expected to leave the Netherlands within 12 weeks are not granted access to a VBL facility, even if their inability to leave is beyond their control (e.g. because of administrative obstacles in their country of origin). The authorities then lose track of aliens in this situation, even though they are willing to cooperate in arranging their departure. To overcome this problem, the government has decided not to apply the 12-week deadline too strictly in cases where such flexibility might facilitate the alien's departure. However, this explicitly does not imply that no time-limit will be set. If an alien is not (or is no longer) making arrangements to leave the Netherlands, thus removing any prospect of voluntary departure, he or she will be required to leave the facility. Good case management on the part of the Repatriation and Departure Service (DT&V) will ensure that aliens in VBL facilities continue working towards their departure. If an alien is unable to return to his or her country of origin even after devoting considerable time and effort to this cause, he or she may be eligible for a residence permit on the grounds of the no-fault criterion. If an alien does not cooperate, he or she will be ejected from the facility.

Pre-VBL placement

Under the current system, aliens can only gain access to a VBL facility if they state in advance that they are willing to cooperate in arranging their departure. The government has decided to modify this condition by introducing a preliminary phase. In practice, this means that aliens are initially given some breathing space, in which they only receive general information on return and are able to familiarise themselves with the facility. This is followed by a series of conversations aimed at encouraging them to cooperate in the return process. During these conversations, they are again informed about the prospects associated with their return. Aliens who are sincerely and demonstrably willing to return are transferred to the regular VBL facility in Ter Apel with a view to preparing for eventual departure. If an alien is not willing to leave the Netherlands at the end of this period, he or she is ejected from the facility. The length of this preliminary phase is limited to a few weeks in order to safeguard the effectiveness of the government's return policy.

New facilities for pre-VBL placement

Several municipalities have provided emergency reception facilities for illegal aliens, invoking their duty of care or their responsibility for maintaining public order. Illegal aliens who are housed in such facilities are now partially outside the state's purview, and as a result, they are not covered by the government's return policy. In order to resolve this undesirable situation, pre-VBL placements will be made available in various locations. Besides Ter Apel, these facilities will be limited to the Netherlands' five largest cities: Amsterdam, Rotterdam, The Hague, Utrecht and Eindhoven.

Under the direction of the DT&V, central government and the municipalities will jointly provide reception facilities to aliens in these five locations with a view to encouraging their willingness to return. The length of this preliminary placement is limited to a few weeks in order to safeguard the effectiveness of the government's return policy.

Aliens who are willing to arrange their departure can pursue this track in the regular VBL facility in Ter Apel. Long-term reception for illegal aliens in the pre-VBL phase is therefore not an option, as it serves as a preparation for the actual departure process in the regular VBL facility. Central government and the municipalities will share responsibility for the aforementioned facilities, and government funding will depend on the rate at which aliens are successfully returned to their countries of origin. Outcomes will be monitored on a monthly basis. After a year, an initial evaluation of the pre-VBL phase will be conducted to determine whether these facilities should continue operating.

Municipal referrals to the VBL

Thanks to the expanded scope for working towards (and coming to terms with) departure in a VBL setting, all municipalities will now have a practical option to refer aliens to one of these facilities as appropriate. If a municipality encounters an illegal alien, it can also notify the DT&V, which will collect and transfer the alien to the pre-VBL facility in Ter Apel.

Preventing abuse

Because aliens are registered, they can be prevented from repeatedly using pre-VBL facilities in different locations when there is no genuine prospect of return.

Investing in voluntary return

The best way to improve return outcomes is to increase the percentage of voluntary return. The changes described in this letter will contribute to this goal. To support these efforts the government will invest additional funds in activities promoting voluntary return.

The government has earmarked €15 million from its general funds for the above-mentioned changes to the VBL facility and the introduction of a pre-VBL phase. In addition, it will invest a further €5 million from its general funds in the return process and return-related projects. The Ministry of Foreign Affairs' migration and development budget (€4 million) will continue to be used for return-related projects and will be increased to €10 million per year.

In addition to investing in domestic return strategies, it is also important to invest in countries of origin with a view to fostering permanent return. The government will use the development cooperation budget to invest additional funds in reception in the region and projects in countries of origin that genuinely contribute to permanent return. The key principle in this regard is to make such investment conditional on the cooperation of these countries in the return process. The government continues to push for reception in the region wherever possible. Search and rescue efforts by North African countries are also helpful in this regard. Resources from the development cooperation budget will be used to support these efforts.

Implications

These improvements in the return system will mean municipalities no longer need to provide or fund long-term reception facilities for illegal aliens beyond what may be required on the basis of the forthcoming judgment by the Council of State described

above. In accordance with the original objective of the administrative agreement between central government and the local authorities, such forms of reception should therefore be shut down.

The government would prefer to incorporate the above-mentioned principles into an addendum to the existing administrative agreement with the municipalities. The agreement will be binding so as to ensure adequate incentives to promote its implementation.

If the amended administrative agreement is not adopted by 1 November 2015, the government will revert to the existing agreement and arrange matters on this basis, for example by withholding the special municipal budget for the integration of newcomers.

Legal developments

On 11 May 2015, the Council of State will consider several cases involving the question of whether, on the basis of various treaties, the Netherlands is subject to more far-reaching obligations than those currently laid down in Dutch policy. The Council of State is expected to issue a landmark judgment on this question, with which we will obviously comply.

The expected scope of this judgment is such that, even if it is given after 15 June 2015, we will undertake to maintain the financial assistance pledged by the former State Secretary for Security and Justice to municipalities providing basic reception facilities until such time as the Council of State issues its judgment.

II For the accepted provisions concerning thematic group ‘Labour rights’: articles 2, 4, 5, 6, 21, 22, 26, 28 and 29: the information required by the European Committee of Social Rights in the event of non-conformity for lack of information (Conclusions 2014)

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

The Committee asks that the next report provide data on the net average wage and the net minimum wage paid to a single worker without children, as well as more precise information and data on supplements and benefits available to such worker.

Answer:

The modal gross annual income is €35,500, which is equivalent to a net income of €24,969 a year. Modal income earners are not entitled to receive healthcare benefit or housing benefit. The standard employed person’s tax credit and general tax credit are applied when calculating the tax payable on gross income.

The statutory minimum wage is €19,502 gross per annum, which translates to a net annual income of €16,494. Healthcare benefit is €942 a year, and housing benefit approximately €1,060 a year (depending on the amount of rent paid). Minimum wage-earners are also entitled to the two tax credits mentioned, and may additionally claim individual crisis payments, if the need arises.

In both of the aforementioned cases, the figures are for single workers without children, who do not own their own home or have any other assets.

The Committee notes from EUROSTAT (Monthly minimum wages, country-specific information) that the Government may decrease the statutory minimum wage in certain enterprises or sectors in case of severe economic adversity. It requests that the next report provide information on this point.

Answer:

We assume that this refers to shorter working hours. Employers who have reduced labour requirements (down by at least 20%) due to exceptional circumstances that cannot reasonably be attributed to normal business risk may temporarily (for up to 24 calendar weeks) apply to the Ministry of Social Affairs and Employment for an exemption from the ban on short-time working. If an exemption is granted, they may claim unemployment benefit for their employees for the hours not worked. However, this scheme never results in employees earning less than the statutory minimum wage for the hours they do work.

In the Netherlands, it is impossible to lower the statutory minimum wage – by legal means or otherwise – in times of economic crisis.

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

The Committee asks that the next report provide updated information on the preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat sexual harassment, in particular those taken in consultation with social partners with a view to informing workers about the nature of the behaviour in question and the available remedies. The addendum to the report indicates that in 2014 – out of the reference period – an awareness-raising programme on psychosocial burden (including sexual harassment) was launched, in cooperation with the European Occupational Safety and Health Agency (EU-OSHA). The Committee asks the next report to provide information on the activities, specifically related to sexual harassment, that will have been undertaken in the framework of this programme.

The Committee asks the next report to clarify what protection, if any, is provided to victims of sexual harassment against retaliation for upholding their rights.

Answer:

The Netherlands has an ongoing awareness-raising programme on psychosocial burden (including sexual harassment), which started in 2014 and is due to run until 2018. Each year, the focus will be on a different work-related psychosocial risk.

The Netherlands favours a positive approach. The programme is therefore directed at the general public as well as those in the vanguard, i.e. employers and employees. The emphasis is on the stories, experiences and good practices of innovators and early adopters.

The first year, 2014, saw the start of a general four-year public-awareness campaign aimed at making it easier to address the subject in the workplace. The social partners and OSH services are involved. There is a Facebook page, a website with tips and tools, and a test where people can check their own stress levels. There have also been network meetings and a special ‘work-related stress week’ was organised in November 2014. To generate wider publicity, a few Dutch celebrities have been brought on board to act as ambassadors for the campaign. Although the campaign is general in nature, it aims to get people talking about work-related stress and specifies sexual harassment as a trigger for work-related stress.

In the second year, the programme will be extended to cover the topics of stress related to aggression and bullying. The campaign against bullying started on 1 June 2015.

The third and fourth years of the programme – 2016 and 2017 – will focus on sexual and other forms of harassment. Since detailed plans have yet to be finalised, no data can be provided at this stage. Further information will of course be sent to the Committee as it becomes available.

Employees who have experienced sexual harassment or assault have a number of options open to them, with special provisions to protect them against retaliation in some cases:

- Under article 7:658 of the Dutch Civil Code (CC), employees can hold their employer liable for any material damage and/or emotional distress they suffer as a result of sexual harassment by the employer or one or more colleagues, either in the workplace or while performing their work. If an employee has provided reasons and, if necessary, proof that he/she has sustained damage or distress while performing his/her work, the employer is deemed liable for this. This does not apply if the employer has fulfilled its duty of care. To be deemed to have fulfilled its duty of care, the employer must have met its obligations under the Working Conditions Act (including responsibility for preventing and combating work-related stress). If an employer contravenes – or allegedly contravenes – this Act, the employee concerned may submit a complaint to the Social Affairs and Employment Inspectorate. In such cases, the Inspectorate can

investigate whether the employer has fulfilled its duty of care. To protect the complainant, the latter's identity is not disclosed unless he/she has no objection.

- Employees can submit a claim for damages to the civil court and/or file a complaint with the Netherlands Institute for Human Rights for sexual harassment contrary to section 1a of the Equal Treatment (Men and Women) Act. Subsection 4 of this section refers to a prohibition on victimisation, which means that an employee who rejects or passively submits to sexual or other forms of harassment may not be treated adversely by the employer. Section 6a of the Act reverses the burden of proof, i.e. the victim need only adduce facts in support of unequal treatment. The other party must then prove that he/she did not act unlawfully.

The Committee asks the next report to provide comprehensive and updated information on the relevant case law concerning sexual harassment, including information on the damages awarded, and to clarify whether reinstatement is possible when employees have been forced to resign because of the sexual harassment.

Answer:

The answer to this question is based on information from the Dutch database www.rechtspraak.nl, which contains a list of all published court rulings since 1998.

According to the case law studied, in most cases of sexual harassment, the perpetrators are summarily dismissed or their employment contract is dissolved by the court; in a small number of cases, the employment contract of the victims is terminated, either at their own or at the employer's request. Since 1998, only 18 victims of sexual harassment have taken legal action to claim damages. The second tranche of the Work and Security Act (effective as from 1 July 2015) brings a change in dismissal law. This has not been taken into account in our research.

Victims of sexual harassment can claim damages in various ways:

Firstly, it is possible to hold the employer liable under the employer's liability provision in article 7:658 CC. Under this article, employers have a duty of care towards their employees. If an employer has been derelict in this duty, the employee concerned may claim damages.

Among other things, this duty of care means that the employer must have a sexual harassment prevention policy pursuant to section 3, subsection 2, of the Working Conditions Act. Such a policy might include drawing up a code of conduct, appointing a confidential advisor and setting up and monitoring a complaints procedure. If the employer pursues an active policy, there is no need to proactively investigate whether employees are being subjected to sexual harassment, unless the employer specifically suspects this. In the event of a complaint, the employer is expected to act diligently and initiate an investigation. Employers who fail to take appropriate action are held liable under article 7:658 CC. In cases where the company doctor or the appointed confidential advisor does not take appropriate action, the employer is liable in principle. If the employer does not fulfil its duty of care, any legal action taken pursuant to article 7:658 CC will be successful and the employer may be required to pay damages even if sexual harassment is not established. This is the case, for instance, if the employer did not pursue the complaint diligently and failed to initiate an investigation. Under article 7:658 CC, the courts have awarded compensation of between €6,806.70 and €45,000 for material damage and/or emotional distress.

Another way for victims to claim damages is in the event of dismissal. In an application to the court to have an employment contract dissolved under article 7:685 CC, the employee may request dissolution compensation pursuant to paragraph 8 of article 7:685 CC. There have also been cases of an employer applying for dissolution of an employment contract without compensation, whereupon the employee concerned makes a counter-application, for

dissolution with compensation. If the employer has terminated the employment contract with the consent of the Employee Insurance Agency (UWV), the employee may institute proceedings for unfair termination of employment and claim damages under article 7:681 CC. The aforementioned employer's duty of care also affects dissolution compensation. When awarding damages in such cases, the limited jurisdiction sector of the district court takes into account how the employer dealt with the sexual harassment complaint and the employer's subsequent handling of the matter. Failure to act diligently earns a high C factor,⁵ which increases the level of compensation to be paid.

As before, even if sexual harassment is not established, the employer's conduct may nevertheless result in the court ordering dissolution compensation. The amount of compensation awarded is directly proportional to the employer's degree of culpability. In cases involving sexual harassment, the courts have awarded between €10,000 and €45,000. Another possible outcome is for the employment contract to be dissolved without compensation, even though sexual harassment has been established. In such cases, no blame can be attributed to the employer, as the duty of care was fulfilled.

The award of damages or dissolution compensation therefore depends on the employer's conduct rather than on the fact that sexual harassment has taken place. In both types of proceedings, if the employer has acted properly and diligently, no compensation is awarded even if sexual harassment is established.

The second part of the question concerns whether reinstatement is possible when employees have been forced to resign because of sexual harassment. Since a preventive assessment is carried out before an employment contract can either be dissolved by the courts or terminated by the employer, an employee cannot be dismissed because of sexual harassment. The consent required for termination will not be granted. In the unlikely event of consent being granted, the employee has two options. He/she may institute proceedings for unfair termination of employment and claim damages under article 7:681 CC. In this case, the employment contract remains terminated. The employee may also demand restoration of the employment relationship under article 7:682 CC, and be reinstated in his/her job. This second option rarely occurs in practice. In the case of a dissolution application, the court will either reject it or award the employee substantial compensation. The question of involuntary dismissal only arises if the employee has been a victim of sexual harassment and is forced to sign a settlement agreement. In this case, the employee resigns and may invoke defect of consent at the time of signing the agreement, on the grounds of duress, fraud (article 3:44 CC) or error (article 6:228 CC). If the court finds that there has indeed been defect of consent, it will annul the settlement agreement and the employee will retain his/her job. No case law was found where an employee was forced to sign a settlement agreement.

Besides taking legal action, the employee may also submit a sexual harassment complaint to the Netherlands Institute for Human Rights, which will rule whether or not the complaint is well founded. All decisions are made public and the employer is identified. The Institute's findings are not binding, but many parties attach consequences to them. The employee may also enter this decision into evidence in legal proceedings and the court may take it into consideration or disregard it. Since 1998, 14 decisions have been delivered on complaints regarding sexual harassment at work: seven were upheld and seven were rejected.

⁵ The limited jurisdiction sector's standard formula for redundancy payments, $A \times B \times C$, is used to determine dissolution compensation, where A is the number of weighted years' service, B is gross wage and C is the correction factor. The employer's degree of culpability is factored in using the C factor. $C=1$ means no culpability or equal culpability on both sides; with $C < 1$, culpability lies with the employee; and with $C > 1$, culpability lies with the employer.

Report in respect of the Caribbean part of the Netherlands

Introduction on the relationship between Dutch central government and the islands of Bonaire, St Eustatius and Saba

Responsibility for social security and employment has been shared between Dutch central government and the islands of Bonaire, St Eustatius and Saba (known as the BES islands) in the following manner since the constitutional reform in October 2010: central government grants work permits and pays out social benefits, while the island authorities are responsible for placement, reintegration and childcare.

Central government and the island authorities work together to improve the socio-economic situation – and, by extension, worker status – in the Caribbean Netherlands in a step-by-step process. During Caribbean Netherlands Week in June 2015, for instance, the island authorities and the Ministry of Social Affairs and Employment discussed a number of fundamental ILO conventions that have not yet been implemented on the BES islands, as well as the obligations these conventions entail for the Caribbean Netherlands.

Central government in The Hague is currently liaising with the Caribbean Netherlands on how to improve the provision of information regarding the situation on Bonaire, St Eustatius and Saba. At the moment, there is shortage of data about various socio-economic aspects, which unfortunately means that we are not in a position to answer all of the Committee's questions.

ARTICLE 1: THE RIGHT TO WORK

ARTICLE 1 PARA. 1

"With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:

to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;"

Question A

Please indicate the policy followed by your government in attempting to reach and maintain full employment. Please supplement with details of the measures and programmes implemented to achieve as high and stable a level of employment as possible.

Please indicate, if possible, the trend in total employment policy expenditure over the past five years, including the relative shares of "active" (job creation, training, etc.) and "passive" (financial compensation, etc.) measures.

Please indicate the active policy measures taken in order to favour access to employment of groups most exposed to or affected by unemployment (eg. women, the young,⁶ older workers, the long-term unemployed,⁷ the disabled, immigrants and/or ethnic minorities). Please give indications on the number of beneficiaries from these measures and information, if possible, on their impact on employment.

Answer to question A

During Caribbean Netherlands Week in June 2015, the State Secretary for Social Affairs and Employment held talks with the island executives of Bonaire, St Eustatius and Saba. The fight against poverty was one of the key issues discussed, with the participants agreeing to organise a joint working conference in the autumn of 2015, covering such topics as additional measures to increase employment. The conference will also contribute to the multi-annual programme that the island executives of Bonaire and Saba have agreed with central government (note that St Eustatius has been placed under supervision and has not yet signed such an agreement). This programme comprises three main components, two of which are economic development and poverty reduction. Increasing the employment rate is the best way to tackle poverty and stimulate economic development on the islands.

As mentioned in the Netherlands' 24th report, the BES islands and central government have been taking an integrated approach since 2011 in an effort to improve the islands' socio-economic situation. The allocated budget is being used, for instance, to set up job programmes for people with poor employment prospects, with participation criteria being considered for specific target groups. Good childcare provision is crucial, particularly for single mothers, and these programmes also address this need.

Question B

Please indicate the trends in employment⁸ covering all sectors of the economy. In connection with this, indicate as far as possible, the activity rate,⁹ the employment rate¹⁰ and the breakdown

⁶ Aged between fifteen and twenty-four.

⁷ Persons without employment for over one year and seeking employment.

⁸ Reference is made to the definition of employment adopted by the Thirteenth International Conference of Labour Statisticians (Geneva, 1982) or any further versions.

⁹ The activity rate represents the total labour force as a percentage of the population aged 15 years and

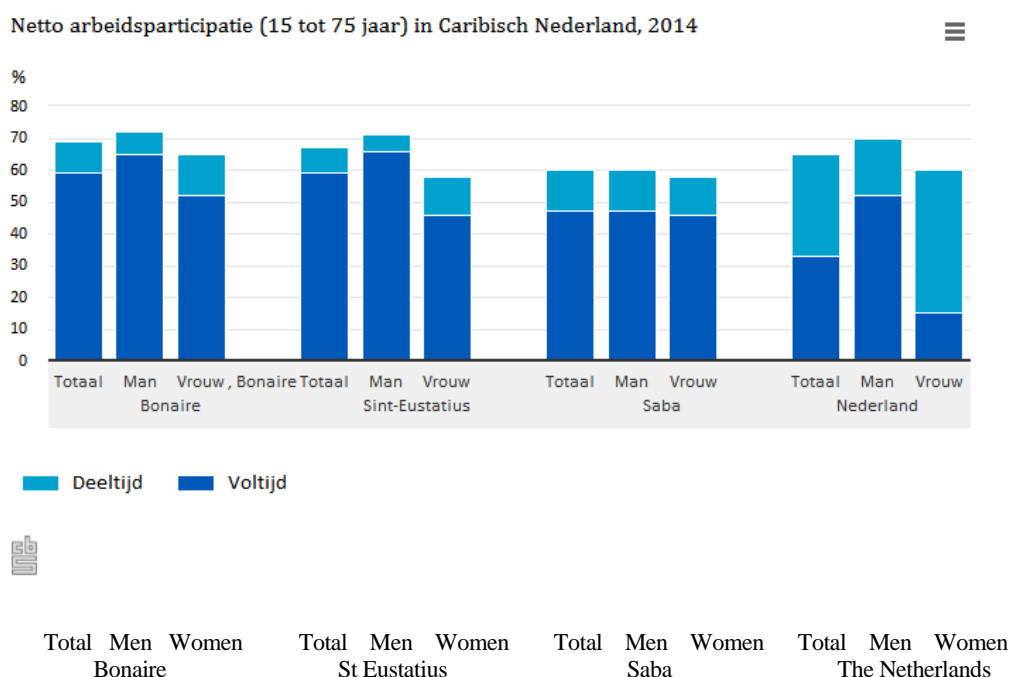
of employment by region, by sex, by age, by employment status (employed, self-employed), by type of employment (full time and part time, permanent and fixed term, temporary), and by sector of activity.

Please give the trend of the figures and percentages of unemployed in your country, including the proportion of unemployed to the total labour force. Please give a break-down of the unemployed by region, category, sex, age and by length of unemployment.

Answer to question B

In 2014 almost 14,500 people aged between 15 and 75 lived on Bonaire, compared with 3,300 and 1,500 on St Eustatius and Saba, respectively. The net employment rate among this age group is 68.9% on Bonaire, 67.8% on St Eustatius and 59.3% on Saba.

Net employment rate (15-75 age group) in the Caribbean Netherlands, 2014



Deeltijd = Part-time Voltijd = Full-time

Unemployment on Bonaire was 6.4% of the labour force in 2014 (equivalent to about 700 unemployed), and 8.8% on St Eustatius, where a particularly high proportion of young people were out of work. Saba had the lowest unemployment rate (2.5%). (Source of above statistics: Statistics Netherlands, press release on the 2014 Labour Force Survey. The survey findings have not yet been published so no additional figures are currently available.)

Employed labour force (15-75 years of age) by economic sector, 2014

	Bonaire	St Eustatius	Saba
	Number		
Agriculture, forestry & fisheries	44	.	22
Mineral extraction	15	39	.

over and living in private households. The labour force is defined as the sum of persons in employment plus the unemployed.

¹⁰ The employment rate represents persons in employment as a percentage of the population aged 15-64 years and living in private households.

Manufacturing	713	224	47
Energy	.	.	.
Water companies and waste management	25	20	.
Construction	1726	183	69
Trade	1045	42	58
Transport and storage	440	152	26
Hotel & catering	1309	140	89
Information and communication	68	.	15
Financial services	265	.	.
Renting, buying and selling property	36	.	.
Specialised business services	131	68	.
Renting/leasing and other business services	496	182	32
Public administration and public services	1348	439	199
Education	458	219	140
Health care and social services	1049	267	102
Culture, sport and leisure	104	40	21
Other services	274	69	32
Households	.	.	.
Extraterritorial organisations	.	.	.
Unknown	396	95	32
Total employed labour force	9959	2203	900

Source: Statistics Netherlands

Key: a period (.) in the table means that no sufficiently accurate data is available for reporting purposes.

Question C

Please indicate the trend in the number and the nature of vacant jobs in your country.

Answer to question C

Detailed information is not available (see table below).

Island	Number of vacancies as at end February 2013
Bonaire	341 (i.e. 5% in relation to the total number of people employed)
St Eustatius	21 (i.e. 1.5% in relation to the total number of people employed)
Saba	18 (i.e. 3% in relation to the total number of people employed)

Source: Ecorys: The labour market in the Caribbean Netherlands in 2013

ARTICLE 1 PARA. 2

"With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:

to protect effectively the right of the worker to earn his living in an occupation freely entered upon;"

Elimination of all forms of discrimination in employment

Question A

Please give information concerning legislative or other measures taken to ensure the elimination of all discrimination in employment which might be based on sex, social or national origin,

*political opinion, religion, race, colour or age and to promote effectively equal opportunities in seeking employment and in taking up an occupation.*¹¹

Please give information in this respect on existing sanctions and remedies in cases of discrimination in employment.

Question B

Please indicate any methods adopted:

- a. *to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of the above policy of non-discrimination;*
- b. *to ensure the acceptance and observance of the above policy through educational efforts.*

Question C

Please indicate the guarantees, including applicable sanctions and remedies, which prevent any discrimination in regard to members of workers' organisations at the time of engagement, promotion or dismissal.

Answer regarding questions A-C:

No information available.

Prohibition of forced labour

Question D

*Please indicate whether any form of forced or compulsory labour is authorised or tolerated.*¹²

Answer to question D

Countering all forms of trafficking in human beings is a priority for the Netherlands, including for the BES islands. This type of trafficking has been criminalised under article 286f of the Criminal Code for Bonaire, St Eustatius and Saba.

The Dutch government refers to the report on the measures to give effect to the provisions of the Abolition of Force Labour No. 105 for the period 1 June 2012 to 1 June 2015

Full translated English text of article 286f of the Criminal Code for Bonaire, St Eustatius and Saba:

1.) Any person who:

- 1°. with the intention of exploiting another person or removing his or her organs, recruits, transports, transfers, accommodates or shelters that other person by means of duress, violence or another hostile act, or the threat of violence or other hostile act, or by means of extortion, fraud, deception or the abuse of power arising from a specific state of affairs, or by means of the abuse of a position of vulnerability, or by means of giving or receiving payments or benefits in order to obtain the consent of a person having control over that other person;

¹¹ The term "discrimination" in this Form is to be understood in terms of ILO Convention No. 111 (Discrimination, Employment, Occupations), Article 1.

¹² The term "forced or compulsory labour" in this Form is to be understood in terms of ILO Convention No. 29 (Forced Labour), Article 2.

- 2^o. recruits, transports, transfers, accommodates or shelters a person with the intention of exploiting that other person or removing his or her organs, if that person has not yet reached the age of eighteen years;
 - 3^o. recruits, takes away or abducts a person with the intention of inducing that person to make him or herself available for sexual acts with or for a third party for payment in another country;
 - 4^o. forces or induces another person by means referred to under 1^o to make him or herself available for work or services or to make his/her organs available, or takes any action in the circumstances referred to under 1^o which he knows or may reasonably be expected to know will result in that other person making him or herself available for work or services or making his or her organs available;
 - 5^o. induces another person to make him or herself available for sexual acts with or for a third party for payment or to make his or her organs available for payment, or takes any action in relation to another person which he knows or may reasonably be expected to know will result in that other person making him or herself available for these acts or making his or her organs available for payment, if that other person has not yet reached the age of eighteen years;
 - 6^o. intentionally profits from the exploitation of another person;
 - 7^o. intentionally profits from the removal of organs from another person, if he knows or may reasonably be expected to know that the organs of that person were removed under the circumstances referred to under 1^o;
 - 8^o. intentionally profits from the sexual acts of another person with or for a third party for payment or the removal of that person's organs for payment, if this other person has not yet reached the age of eighteen years;
 - 9^o. forces or induces another person by the means referred to under 1^o to provide him with the proceeds of that person's sexual acts with or for a third party or of the removal of that person's organs;
shall be guilty of trafficking in human beings and as such liable to a term of imprisonment not exceeding six years or a fifth category fine.
- 2.) Exploitation shall include, at the minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced or compulsory labour or services, slavery or practices comparable to slavery or servitude.
 - 3.) The following offences shall be punishable by a term of imprisonment not exceeding eight years or a fifth category fine:
 - 1^o. offences as defined in paragraph 1 if they are committed by two or more persons acting in concert;
 - 2^o. offences as defined in paragraph 1 if they are committed in respect of a person who is under the age of sixteen.
 - 4.) The offences defined in paragraph 1, committed by two or more persons acting in concert under the circumstances referred to in paragraph 3 under 2^o, shall be punishable by a term of imprisonment not exceeding ten years or a fifth category fine.

- 5.) If one of the offences defined in paragraph 1 results in serious physical injury or threatens the life of another person, it shall be punishable by a term of imprisonment not exceeding twelve years or a fifth category fine.
- 6.) If one of the offences defined in paragraph 1 results in death, it shall be punishable by a term of imprisonment not exceeding fifteen years or a fifth category fine.
- 7.) Article 261 shall apply mutatis mutandis.

Question E

If so, please describe the nature and scope of any such labour and indicate the extent to which recourse has been had thereto during the reference period.

Answer to question E

Not applicable.

Question F

Please indicate what measures are being taken to secure the complete abolition of forced or compulsory labour and the date by which these measures will be fully implemented.

Answer to question F

A multidisciplinary working group to combat trafficking in human beings, chaired by the public prosecutor's office, has been set up on each of the three islands. Regular inspections are carried out by multidisciplinary teams (comprising police officers, labour inspectors and representatives from the public prosecutor's office) in high-risk sectors. A number of police investigations into human trafficking and labour exploitation are underway at the time of reporting.

Like the European Union, the BES islands have designated 18 October as Anti-Trafficking Day and have launched prevention campaigns to mark the occasion.

Question G

Please give information concerning the conditions under which work is carried out in prison establishments.

Answer to question G

The new vision associated with the new Dutch Correctional Institution (JICN) building includes making work and adult education available to all prisoners. Given the limited numbers of female prisoners and the generally short sentences they serve, this will be offered on a case-by-case basis. When a woman is admitted to the JICN, the institution will do its best to offer a course that is consistent with her wishes and capabilities. Any course offered should be relatively short and should also maximise the woman's chances of employment once she is released. Social workers will contact businesses to ask whether they can offer the woman in question a job, and if so what kind of training she will need to prepare.

ARTICLE 1 PARA. 3

*"With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:
to establish or maintain free employment services for all workers;"*

Question A

Please describe the operation of free employment services available in your country, indicating the age, sex and nature of occupation of persons placed by them in employment and persons seeking employment.

Please indicate as far as possible the number of vacancies, the placement rate and the duration of unemployment of persons placed.

Question B

Please describe the organisation of public employment services in your country indicating the accompanying measures for the unemployed, and where appropriate, the steps taken to revise the geographical distribution of local and regional employment centres and to redeploy resources when the changing patterns of economic activity and of population so warrant.

Answer to questions A and B

Employment services in the Caribbean Netherlands are governed by the Act of 4 July 1946 establishing a BES public employment office. Each island executive is responsible for placement activities within its area. Bonaire's Social Support and Employment department has job placement within its remit and uses an online vacancy database where jobseekers can register and employers can post their vacancies. Limited public employment services are available on St Eustatius. Saba has no public employment office, partly because the labour market is so small. Here, vacancies tend to be filled through informal channels. St Eustatius and Saba have no vacancy database, but the possibility of them using Bonaire's facilities is being explored.

Question C

If both public and private free employment services exist in your country, please describe the steps taken to co-ordinate such services, and to determine the conditions governing the operation of private employment agencies.

Answer to question C

Bonaire has private employment agencies, but no information on this subject is available for St Eustatius or Saba; nor do we have any details about the coordination of public and private employment services.

Question D

Please indicate whether and how the participation of representatives of employers and workers in the organisation and operation of the employment services and in the development of employment services policy is provided for.

Answer to question D

Employers and workers are not highly organised, if at all, in the Caribbean Netherlands. It is unlikely that such organisations are involved in employment services.

On Bonaire, representatives of the public body, employers and workers initiated a social dialogue in May 2013 to promote the island's socio-economic development.

Question E

Please indicate what legislation or administrative guarantees are provided to ensure that these services are available to all.

Answer to question E

Section 4 of the Act of 4 July 1946 establishing a BES public employment office stipulates that public employment services should be available to all employers and jobseekers.

ARTICLE 1 PARA. 4

*"With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:
to provide or promote appropriate vocational guidance, training and rehabilitation."*

Please indicate, illustrating with relevant data as far as possible, what measures have been taken to provide or promote:

- a. vocational guidance;¹³
- b. vocational training;¹⁴
- c. vocational rehabilitation;¹⁵

with the aim of giving everyone the possibility of earning his living in an occupation freely entered upon.

Please indicate whether equal access is ensured for all those interested, including nationals of the other Contracting Parties to the Charter lawfully resident or working regularly in your territory, and disabled people.

Answer

Youth opportunities programmes and job programmes have been set up in the Caribbean Netherlands to prepare people for employment or to help them find work. The first type of programme is intended for young people aged 18 to 25 who have dropped out of school without gaining any qualifications. The aim is to prepare them to return to mainstream education so that they can gain the basic qualifications they need to improve their employment prospects. Job programmes are designed to help people who cannot find work through their own efforts. Where necessary, a separate preparatory scheme is available, focusing on social skills and attitude towards work. Job programmes often involve a combination of working and learning.

¹³ If your country has accepted Article 9, it is not necessary to describe the vocational guidance services here.

¹⁴ If your country has accepted the four paragraphs of Article 10, it is not necessary to describe the vocational training services here.

¹⁵ If your country has accepted the two paragraphs of Article 15, it is not necessary to describe the rehabilitation services for physically or mentally handicapped persons.

Questions from the European Committee of Social Rights

paragraph 1

1. *The Committee asks the next report to provide information on the action taken and progress made as a result of these initiatives.*
2. *The Committee asks the next report to indicate whether there are other active labour market measures available to jobseekers, besides the above-mentioned project.*
3. *The Committee also wishes to receive information on the number of beneficiaries in the different types of active measures, and on the overall activation rate, i.e. the average number of participants in active measures as a percentage of total unemployed.*
4. *The Committee asks data as regards expenditure on active labour market policies (as a percentage of GDP).*
5. *The Committee asks the next report to also indicate whether employment policies are monitored and how their effectiveness is evaluated.*

Answer to questions 1-5

Job programmes are available on each of the three islands, usually in sectors offering good employment prospects, such as construction, hotel & catering, tourism (Bonaire) and agriculture (Bonaire and St Eustatius). St Eustatius and Saba also organise programmes that are not aimed at one particular sector; instead, the opportunities available are explored for each individual participant. This involves intensive counselling, which also covers social skills and attitude towards work. There is also a great deal of emphasis on contact with potential employers.

Increasing the employment rate on the BES islands is of vital importance to the Ministry of Social Affairs and Employment. At local level, there is frequent consultation with the public body, educational establishments and employers to improve the chances of the local population finding work, for example by aligning education more closely to the needs of the labour market. When scrutinising work permit applications, priority is also given to local workers for the jobs in question.

As already mentioned in the answer to question A, article 1, paragraph 1, a working conference will be held in the autumn of 2015 to address such topics as additional measures to increase employment.

paragraph 2

6. *The Committee asks next report to provide information on them.*
7. *The Committee asks if there is any upper limit on the compensation that may be awarded in cases of discrimination, including those in which employees have been dismissed having filed complaints of discrimination.*
8. *The Committee asks what the situation is in this respect (the burden of proof should not rest entirely on the complainant, but should be the subject of a shift in disputes relating to an allegation of discrimination in matters covered by the Charter)*
9. *The Committee asks what the situation is in this respect (ruling in court).*
10. *The Committee asks if there are restrictions on foreign nationals' access to certain sectors or services.*

Answer to questions 6-10

Foreign nationals have access to the labour market on the islands by means of a work permit

system, with priority given to local workers.

11. *The Committee asks the next report to present details of the legislation prohibiting discrimination in employment in the Caribbean part since the constitutional reform of 2010 and provide information on its implementation.*

Answer to question 11

No information available.

paragraph 3

16. *The Committee asks whether public employment services exist on Bonaire, Sint Eustatius and Saba.*
17. *The Committee asks what is the legal basis for the operation of such services, as well as the nature and type of services provided.*
18. *The Committee also asks whether trade union and employers' organisations participate in organising and running the public employment services.*
19. *The Committee asks for confirmation that employment services are free of charge.*
20. *The Committee asks the next report to include information about performance indicators, such as the number of vacancies notified to employment services, the number of placements made by these services and the average length of time in filling vacancies*
21. *The Committee asks whether there exist private employment agencies, how these are licensed, operate and co-ordinate their work with the public employment service.*

Answer to questions 16-21

See answers given to the questions in article 1, paragraph 3.

paragraph 4

22. *The Committee asks if free of charge vocational guidance services are provided, both in the education system as well as for adults in the labour market.*
23. *The Committee asks what is the legal basis and the type of services provided.*
24. *The Committee asks the next report to also include information on these matters (the funding, staffing and the number of beneficiaries of vocational guidance).*
25. *The Committee asks if there is a regulatory framework and/or a strategy related to continuing vocational education, adult education or lifelong learning.*
26. *The Committee also asks what types of continuing vocational training programmes are available, and how many people have access to them.*
27. *In the event that companies organise the training courses, the Committee asks whether employees' training costs are covered by the company or the workers themselves.*
28. *As the report contains no information on guidance and training for persons with disabilities, the Committee asks next report to provide information thereon and to be kept informed on the adoption and implementation of any programmes, policies or laws in this area.*
29. *The Committee also asks how many persons with disabilities were in employment and self-employment programmes, or participated in other vocational training or rehabilitation initiatives.*
30. *Finally, it asks whether nationals of other States Parties lawfully resident or working regularly on Bonaire, Sint Eustatius and Saba enjoy equal treatment regarding all the*

aspects considered under Article 1§4.

Answer to questions 22-30

Vocational guidance is the responsibility of the public employment office (section 3, subsection 4 (b) of the Act of 4 July 1946 establishing a BES public employment office). This service is still in the development stage in the Caribbean Netherlands and more detailed information is not currently available.

The Caribbean Netherlands does have adult education institutions, such as FORMA on Bonaire. On all three islands, adults can also take part in job programmes organised by the public body. These programmes are especially intended for anyone who has difficulty accessing the labour market, including people with physical or mental disabilities.

Careers advisors are tasked with providing general and vocational secondary students with information and guidance on educational and career options. In schools, the service is funded out of their normal budget.

Under section 1.3.1, subsections a to d, of the Adult and Vocational Education (BES) Act, the secondary vocational education institutions that are incorporated into secondary schools on the islands must ensure that:

- a. education is accessible to all, but especially disadvantaged groups,
- b. effective programmes are available, in particular by carefully aligning adult and vocational education courses,
- c. career planning and guidance is available, and
- d. the courses offered are adapted to social trends at national and international level in general and in the labour market in particular.

Secondary vocational education on the BES islands is open to all age groups under the aforementioned Act.

The Caribbean Netherlands Education and Employment Council (ROA CN) works closely with companies, schools and local and national government to ensure that the vocational education provided on Bonaire, Saba and St Eustatius matches the needs of the islands' business community. ROA CN accredits placement providers and organises workshops and training for instructors. Its head office is on Bonaire, and there are trainers/advisors based on Saba and St Eustatius.

ARTICLE 1 of the 1988 Additional Protocol: RIGHT TO EQUAL OPPORTUNITIES AND EQUAL TREATMENT IN MATTERS OF EMPLOYMENT AND OCCUPATIONS WITHOUT DISCRIMINATION ON GROUNDS OF SEX

“1. With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promotion its application in the following fields:

- access to employment, protection against dismissal and occupational resettlement;*
- vocational guidance, training and rehabilitation;*
- terms of employment and working conditions, including remuneration;*
- career development, including promotion.*

2. Provisions concerning the protection of women, particularly as regards pregnancy, confinement and the post-natal period, shall be deemed to be discrimination as referred to in paragraph 1 of this article.

3. Paragraph 1 of this article shall not prevent the adoption of specific measures aimed at removing de facto inequalities.

4. Occupational activities which, by reason of their nature or the context in which they are carried out, can be entrusted only to persons of a particular sex may be excluded from the scope of this article or some of its provision.”

Questions from the European Committee of Social Rights

- 1. The Committee asks the next report to present details of the legislation prohibiting discrimination on the ground of sex in employment in Bonaire, Sint Eustatius and Saba since the constitutional reform of 2010 and provide information on its implementation.*
- 2. It asks in particular if direct and indirect discrimination are prohibited by the law.*
- 3. The Committee asks whether a shift in the burden of proof applies to all gender discrimination cases.*
- 4. The Committee requests information on sanctions and remedies, in particular whether there is a limit to the amount of compensation that may be awarded.*
- 5. The Committee further requests information on sex discrimination cases (including claims for equal pay for work of equal value) brought before the courts or any other bodies.*
- 6. The Committee asks also the next report to specify whether equal pay is explicitly provided for in legislation, whether there are methods for comparing jobs and pay and whether legislation permits, in equal pay cases, comparisons of pay and jobs to be made outside the undertaking/company directly concerned and under what circumstances.*
- 7. Finally, the Committee asks whether any exceptions to the prohibition of discrimination on grounds of sex apply in respect of certain occupations and what they are.*
- 8. The Committee asks what protection measures are applied specifically to pregnant women and women who have recently given birth, particularly as regards maternity leave.*
- 9. The Committee asks the next report to provide detailed information on the position of women in employment and training. It asks in particular for the next report to provide statistics on the male and female employment and unemployment rates and pay differentials between women and men.*

10. *The Committee asks for detailed information in the next report on the positive measures to promote equal opportunities taken in Bonaire, Sint Eustatius and Saba since the constitutional reform of October 2010.*

Answer to questions 1-10

The equality principle enshrined in article 1 of the Dutch Constitution applies on Bonaire, St Eustatius and Saba and provides protection against discrimination. Furthermore, the article relating to equal treatment for men and women in the Dutch Civil Code is declared applicable in article 7a:1614aa of the BES Civil Code. Note that article 1 of the Constitution has not yet been fully incorporated into specific equal treatment legislation for the BES islands, and the Equal Treatment (Men and Women) Act does not yet apply there.

The Dutch government and the BES islands are currently investigating other equal treatment legislation that might be required, giving specific consideration to the obligations arising from ILO conventions 100 and 111 and the possible implementation of necessary legislation.