



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions XXI-1 (2016)

(DENMARK, GERMANY, GREECE, ICELAND, SPAIN,  
POLAND, UNITED KINGDOM)

Articles 1, 9, 10, 15, 18 of the 1961 Charter  
and Article 1 of the Additional Protocol



January 2017

**European Social Charter**  
European Committee of Social Rights  
Conclusions XXI-1 (2016)  
General Introduction

*This text may be subject to editorial revision.*



## **GENERAL INTRODUCTION**

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

Mr Giuseppe PALMISANO (Italian)  
President

Professor of International Law and EU Law  
Director of the Institute for International Legal Studies  
National Research Council of Italy, Rome (Italy)

Ms Monika SCHLACHTER (German)  
Vice-President

Professor of Civil, Labour and International Law  
Director of Legal Studies Institute for Labour Law and Industrial Relations in the European Community  
University of Trier (Germany)

Mr Petros STANGOS (Greek)

Vice-President Professor of European Union law,  
Holder of the Jean Monnet Chair "European human rights law"  
School of Law, Department of International studies  
Aristotle University, Thessaloniki (Greece)

Mr Lauri LEPPIK (Estonian)

General Rapporteur  
Senior Researcher  
School of Governance, Law and Society  
Tallinn University (Estonia)

Mr Colm O'CONNOR (Irish)

Reader in Law  
Faculty of Laws University College, London (United Kingdom)

Ms Birgitta NYSTRÖM (Swedish)

Professor of Private Law, especially Labour Law  
University of Lund (Sweden)

Ms Elena MACHULSKAYA (Russian)

Professor  
Department of Labour and Social Law  
Lomonosov State University, Moscow (Russian Federation)

Ms Karin LUKAS (Austrian)

Senior Legal Researcher and Head of Team  
Ludwig Boltzmann Institute of Human Rights, Vienna (Austria)

Ms Eliane CHEMLA (French)

Conseillère d'Etat  
Conseil d'Etat, Paris (France)

Mr József HAJDÚ (Hungarian)

Dean for International Affairs and Science  
University of Szeged (Hungary)

Mr Marcin WUJCZYK (Polish)

Lecturer in Labour Law and Social Policy  
Jagiellonian University, Cracow (Poland)

Ms Krassimira SREDKOVA (Bulgarian)  
Professor of Labour Law and Social Security  
University of Sofia (Bulgaria)

Mr Raul CANOSA USERA (Spanish)  
Professor of Constitutional Law  
University Complutense, Madrid (Spain)

Ms Marit FROGNER (Norwegian)  
Judge  
Labour Court of Norway, Oslo (Norway)

Mr François VANDAMME (Belgian)  
Former Director International Affairs, Federal Public Service Employment, Labour and Social Dialogue, Brussels (Belgium)  
Former visiting professor, College of Europe (Bruges, 1998-2012, "Enjeux sociaux et gouvernance de l'Europe")  
Former invited "Maître de conférences" (2008-2014) in Labour Law, Catholique University of Louvain, Louvain-la-Neuve, (Belgium)

assisted by Mr Régis BRILLAT, Executive Secretary,

between January 2016 and December 2016 examined the reports of the States Parties on the application of the 1961 European Social Charter.

2. The role of the European Committee of Social Rights is to rule on the conformity of the situations in States with the European Social Charter (revised), the 1988 Additional Protocol and the 1961 European Social Charter.

3. Following the changes to the reporting system adopted by the Committee of Ministers at the 1996th meeting of the Ministers' Deputies on 2-3 April 2014 the system henceforth comprises three types of reports. Firstly, the ordinary reports on a thematic group of Charter provisions, secondly simplified reports every two years on follow-up to collective complaints for States bound by the collective complaints procedure and, thirdly, reports on conclusions of non-conformity for lack of information adopted by the Committee the preceding year.

4. Thus, the conclusions adopted by the Committee in December 2016 concern firstly the accepted provisions of the following articles of the 1961 European Social Charter ("the Charter") belonging to the thematic group "Employment, training and equal opportunities" on which the States Parties had been invited to report by 31 October 2015:

- 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 Parties (Article 18);
- the right to equal opportunities between women and men (Article 1 of the 1988 Additional Protocol).

5. The following States Parties submitted a report: Denmark, Germany, Greece, Iceland, Poland, Spain and the United Kingdom.

6. Croatia did not submit a report. Luxembourg submitted the report very late. The Committee was therefore unable to reach any conclusions on conformity with the relevant provisions in these States for this cycle. The Committee notes the failure of the States concerned to respect their obligation, under the Charter, to report on the implementation of this treaty. Under the circumstances the Committee considers that there is nothing to demonstrate that the situation in these States as regards the provisions concerned is in conformity with the 1961 Charter.

As this is the third successive year that Croatia does not submit a report, the Committee invites the Committee of Ministers to take any appropriate measures to ensure that Croatia fulfills its reporting obligation.

7. As noted above, States which have accepted the collective complaints procedure shall henceforth submit a simplified report every two years. In order to avoid excessive fluctuations in the workload of the Committee from year to year, the 15 States which have accepted the complaints procedure were divided into two groups as follows:

- Group A, made up of eight States: France, Greece, Portugal, Italy, Belgium, Bulgaria, Ireland, Finland<sup>1</sup>;
- Group B, made up of seven States: the Netherlands, Sweden, Croatia, Norway, Slovenia, Cyprus, the Czech Republic<sup>2</sup>.

On this basis, the States belonging to Group B were invited to submit reports on follow-up to collective complaints by 31 October 2015. The conclusions adopted by the Committee in this respect thus concern only the following State bound by the 1961 Charter: Czech Republic.

8. Finally, certain States were invited to report by 31 October 2015 on conclusions of non-conformity for repeated lack of information in Conclusions XX-3 (2014). The conclusions in this respect may concern both States reporting on the thematic group of provisions and those reporting on follow-up to complaints. The only State concerned in Conclusions XXI-1 (2016) is the United Kingdom.

9. In addition to the state reports, the Committee had at its disposal comments on the reports submitted by different trade unions and non-governmental organisations (see introduction to the individual country chapters). The Committee wishes to acknowledge the importance of these various comments, which were often crucial in gaining a proper understanding of the national situations concerned.

10. The Committee's conclusions as outlined above are published in chapters by State. They are available on the website of the European Social Charter and in the case law database that is also available on this site. A summary table of the Committee's Conclusions XXI-1 (2016) as well as the state of signature and ratification of the Charter and the 1961 Charter appear below. In addition, each country chapter highlights selected positive developments concerning the implementation of the Charter at national level identified by the Committee in its conclusions.

### **Statement on information in national reports and information provided to the Governmental Committee**

11. The Committee draws the attention of the States Parties to the obligation to systematically include replies to information requests by the Committee in the national reports. Moreover, the Committee invites the States Parties to always include in the report any relevant information previously provided to the Governmental Committee, whether in writing or orally, or at least to refer to such information, and of course to indicate any developments or changes that may have intervened in the period since the information was provided to the Governmental Committee.

### **Next reports**

12. The next reports on the accepted provisions, which were due before 31 October 2016, concern the following Articles belonging to the thematic group "Health, social security and social protection": 3, 11, 12, 13, 14 and Article 4 of the 1988 Additional protocol. States

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<sup>1</sup> France, Portugal, Italy, Belgium, Bulgaria, Ireland and Finland are Parties to the Charter.

<sup>2</sup> The Netherlands, Sweden, Norway, Slovenia and Cyprus are Parties to the Charter.

having accepted the collective complaints procedure and belonging to Group B<sup>3</sup> were due to submit a simplified report on follow-up to complaints also before 31 October 2016. Finally, by the same date States concerned<sup>4</sup> are to report on any conclusions of non-conformity for lack of information adopted in Conclusions XX-4 (2015).

### **Election of members to the Committee**

The composition of the Committee is governed by Article 25 pursuant to which its 15 members are appointed by the Committee of Ministers for mandates of six years, renewable once.

It is recalled that pursuant to Article 3 of the Turin Protocol members shall be elected by the Parliamentary Assembly. However, this provision alone is still not being applied in practice (pending the formal entry into force of the Protocol).

Members shall be “independent experts of the highest integrity and of recognised competence in international social questions”. Election takes place every second year with a third of the seats (5) being up for election.

At the 1272th meeting of the Ministers’ Deputies on 30 November 2016, the Committee of Ministers held the election to fill the five seats falling vacant on 31 December 2016. Ms Karin LUKAS (Austrian) and Mr Giuseppe PALMISANO (Italian) were elected for a second term, and Ms Aoife NOLAN (Irish), Ms Kristine DUPATE (Latvian) and Ms Barbara KRESAL (Slovenian) were elected as members for a first term in office. The term of office of these members begins on 1 January 2017 and ends on 31 December 2022.

The Committee wishes to express its appreciation and gratitude to the three outgoing members, Ms Elena MACHULSKAYA (Russian), Mr Colm O’CINNEIDE (Irish) and Mr Lauri LEPPIK (Estonian) for their contribution to the Committee’s work and for their tireless efforts to promote social rights.

On 8 December 2016 a workshop in honour of the three outgoing members was organized in Strasbourg on the topic of “The European Social Charter and the European Pillar of Social Rights”.

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### **Declaration on protecting the independent status of the members of the European Committee of Social Rights**

The European Committee of Social Rights was set up under the European Social Charter as a body of independent experts whose main task – similar to that of the European Court of Human Rights in relation to the Convention for the Protection of Human Rights and Fundamental Freedoms – is to interpret the international legal commitments entered into by the States Parties.

This arrangement is highlighted by the Committee of Ministers when it elects the members of the committee, who must meet the required conditions of competence, independence, impartiality and availability and make solemn declarations to that effect upon taking up their duties.

While the consolidation of the reporting system and the development of the collective complaints procedure have enhanced the Committee’s judicial method of operation, at the

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<sup>3</sup> Croatia.

<sup>4</sup> States Parties where information is required on conclusions of non-conformity for lack of information in Conclusions XX-4 (2015): Luxembourg, Spain, the United Kingdom.

same time and paradoxically, the vital characteristic of independence is sometimes undermined because of more or less explicit attempts by certain political, institutional or administrative players both inside and outside the Council of Europe to interfere with or exert undue pressure on the Committee and its secretariat.

In this context, given that the European Committee of Social Rights plays a vital part in ensuring compliance with the Charter through its authoritative interpretations, any interference with or undue pressure exerted on the Committee or the Secretariat also undermines the realisation of human rights, democracy and the rule of law, which are the pillars of the Council of Europe.

For these reasons, the Committee reasserts the independent status of its members and of its secretariat when assisting the Committee in accordance with Rule 13 of the Committee's Rules and asks all institutions and bodies, both inside and outside the Council of Europe, to make sure that this independence is preserved. Accordingly, whenever that independence is interfered with, the Committee will issue this declaration to the parties concerned.



## CONCLUSIONS XXI-1 (2016)

Article	DENMARK	GERMANY	GREECE	ICELAND	POLAND	SPAIN	UNITED KINGDOM
Article 1.1	+	+	-	+	+	-	+
Article 1.2	+	+	-	-	0	-	+
Article 1.3	0	+	0	+	0	-	+
Article 1.4	-	0	0	-	+	0	0
Article 2.4						0	-
Article 4.5							-
Article 9	+	0	+		+	+	+
Article 10.1	+	+	0		+	-	+
Article 10.2	+	+	0		+	+	+
Article 10.3	+	+	0			0	0
Article 10.4	-		0			+	0
Article 15.1	-	+	+	-	+	+	0
Article 15.2	+	+	-	-	+	+	+
Article 18.1	+	-	+	+		-	+
Article 18.2	+	+	+	-		+	-
Article 18.3	+	-	+	-		+	0
Article 18.4	+	+	+	+	+	+	+
P Article 1	+		+			+	

+ conformity	- non-conformity	0 deferral	□ non-accepted provision
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**MEMBER STATES OF THE COUNCIL OF EUROPE  
AND THE EUROPEAN SOCIAL CHARTER**

Situation on 31 December 2016

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	20/05/11		
Azerbaijan	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	06/11/09	<b>26/02/03</b>	26/02/03	
Cyprus	03/05/96	27/09/00	06/08/96	
Czech Republic	04/11/00	<b>03/11/99</b>	04/04/12	
Denmark	*	<b>03/03/65</b>		
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	*	<b>27/01/65</b>		
Greece	03/05/96	18/03/16	18/06/98	
Hungary	07/10/04	20/04/09		
Iceland	04/11/98	<b>15/01/76</b>		
Ireland	04/11/00	04/11/00	04/11/00	
Italy	03/05/96	05/07/99	03/11/97	
Latvia	29/05/07	26/03/13		
Liechtenstein	<b>09/10/91</b>			
Lithuania	08/09/97	29/06/01		
Luxembourg	*	<b>10/10/91</b>		
Malta	27/07/05	27/07/05		
Moldova	03/11/98	08/11/01		
Monaco	05/10/04			
Montenegro	22/03/05	03/03/10		
Netherlands	23/01/04	03/05/06	03/05/06	
Norway	07/05/01	07/05/01	20/03/97	
Poland	25/10/05	<b>25/06/97</b>		
Portugal	03/05/96	30/05/02	20/03/98	
Romania	14/05/97	07/05/99		
Russian Federation	14/09/00	16/10/09		
San Marino	18/10/01			
Serbia	22/03/05	14/09/09		
Slovak Republic	18/11/99	23/04/09		
Slovenia	11/10/97	07/05/99	07/05/99	
Spain	23/10/00	<b>06/05/80</b>		
Sweden	03/05/96	29/05/98	29/05/98	
Switzerland	<b>06/05/76</b>			
«the former Yugoslav Republic of Macedonia»	27/05/09	06/01/12		
Turkey	06/10/04	27/06/07		
Ukraine	07/05/99	21/12/06		
United Kingdom	*	<b>11/07/62</b>		
Number of States	47	<b>2</b> + 45 = 47	<b>10</b> + 33 = 43	15

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.



January 2017

## **1961 European Social Charter**

European Committee of Social Rights

Conclusions XXI-1 (2016)

**DENMARK**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the 1961 European Social Charter (the 1961 Charter) and the 1988 Additional Protocol (the Additional Protocol). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

The following chapter concerns Denmark which ratified the 1961 Charter on 3 March 1965. The deadline for submitting the 35th report was 31 October 2015 and Denmark submitted it on 20 January 2016.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of the thematic group "Employment, training and equal opportunities":

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

Denmark has accepted all provisions from the above-mentioned group.

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

The conclusions relating to Denmark concern 16 situations and are as follows:

- 12 conclusions of conformity: Articles 1§1, 1§2, 9, 10§1, 10§2, 10§3, 15§2, 18§1, 18§2, 18§3, 18§4 and Article 1 of the Additional Protocol;
- 3 conclusions of non-conformity: Articles 1§4, 10§4, 15§1.

In respect of the other situation related to Article 1§3 the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Denmark under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

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

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 4 of the Additional Protocol).

The deadline for submitting that report was 31 October 2016.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

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

### *Paragraph 1 - Policy of full employment*

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

### ***Employment situation***

According to Eurostat, the real GDP growth rate was 1.2% in 2011 and 1.3% in 2014 (EU 28: 1.4%). The 2014 increase is significant since the GDP growth rate in 2013 was – 0.2%.

In 2011, the overall employment rate stood at 73.1%, in 2014 at 72.8%. The overall employment rate was still well above the EU 28 employment rate of 64.9% in 2014.

The male employment rate stood in 2009 at 78.0%, in 2014 at 75.8%. This rate was still significantly above the EU 28 rate of 70.1%. The female employment rate stood in 2009 at 72.9% and in 2014 at 69.8%. Again, this rate is well above the EU 28 rate of 59.6%.

The unemployment rate increased from 7.6% in 2011 to 10.2% in 2014 which is the same rate as the EU 28 average.

Youth unemployment rate decreased considerably during the reference period. It fell from 14.2% in 2011 to 10.8% in 2014. The long-term unemployment rate (as a percentage of active population aged 15-74) remained stable – 1.8% in 2011; 1.7% in 2014.

The Committee notes that the economy grew again in 2014. Whereas the unemployment rate increased to 10.2% from 7.6%, the youth unemployment rate decreased from 14.2% to 10.8%.

### ***Employment policy***

The Committee notes from the report that the Government introduced a number of reforms during the reference period. The disability pension and flexi-job scheme was reformed in 2012. The sickness benefit scheme was reformed in 2014 and the cash benefit system in 2013. All these reforms aimed to maintain or to raise the level of the already high employment rate.

The Government maintains an active employment policy aiming at contributing to ensuring a well-functioning labour market. This takes place in the form of a number of measures in relation to both unemployed and employed persons who are looking for a job or wishing to undergo training or education. And it takes place in the form of measures targeted upon both private and public enterprises.

According to Eurostat, public expenditure on active labour market policies in Denmark amounted to 3.4% of GDP in 2011 which was above the EU 28 average (where the average public spending on active labour market measures as a percentage of GDP that year was 1.8%).

The Committee recalls that labour market measures should be targeted, effective and regularly monitored. It asks in this respect whether the employment policies in place are monitored and how their effectiveness is evaluated.

### ***Conclusion***

The Committee concludes that the situation in Denmark is in conformity with Article 1§1 of the 1961 Charter.

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

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

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

### **1. Prohibition of discrimination in employment**

The Committee previously examined the legal framework in its Conclusions XIX-1 (2008) and Conclusions XX-1 (2012).

The Committee previously asked for updated information on jobs in the public sector/civil service or other occupations reserved for Danish nationals (Conclusions XX-1 (2012)).

The report indicates that in general, there is no requirement of Danish nationality in connection with appointments in central government administration. However, there are exceptions with regard to certain positions as: permanent secretaries; judges; senior deputy judges; certain positions as prosecutor; employees in the police corps; governors of prisons; prison officers; inspectors of the fishery inspection; priests/deans; bishops. There are approximately 15,400 positions within the above mentioned groups. The Committee notes from the report that nationals of EU and EEA enjoy the same opportunities of employment in positions where individuals with Danish nationality are employed as civil servants.

The report adds that in cases where individuals with Danish nationality are employed as civil servants (according to Section 27 of the Danish Constitution), persons without Danish nationality will be employed on terms corresponding to those of civil servants (in accordance with Section 58c of the Civil Servants Act). They will be treated like civil servants with respect to pension.

The Committee asks confirmation that nationals of States Parties to the European Social Charter which are not members of the EU and EEA may be employed in public sector posts with the exception of the positions listed above.

In its previous conclusion (Conclusions XX-1 (2012)), the Committee asked the next report to provide information on concrete measures taken or envisaged to promote equality in employment. The report does not provide the requested information. The Committee asks that the next report provide information on positive measures/actions to promote equality in employment and to combat all forms of discrimination in employment.

The Committee notes from a Direct Request of ILO-CEACR that the Danish Institute for Human Rights provided independent assistance to 145 perceived victims of ethnic discrimination between 2011 and 31 December 2014. The Committee also notes that the mandate of the Danish Institute for Human Rights has been enlarged to include investigations of its own motion about religion, political opinion, national or social origin, disability, sexual orientation and age. The same source indicates that an anti-discrimination unit was set up in April 2014 which carries out anti-discrimination campaigns, coordinates inter municipal efforts against discrimination and supports private companies in their efforts to combat discrimination in the workplace (Direct Request (CEACR) – adopted 2015, published 105th ILC session (2016), Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

The Committee notes from the reports of the European Equality Law Network that the Act on the Board of Equal Treatment was amended in late 2015. The amendments establish that individuals making complaints to the Board of Equal Treatment must have an individual and current interest in the case in question. The amendments also establish that the Institute for Human Rights – The National Human Rights Institute of Denmark may bring complaints to the Board in cases that are a matter of principle or of general public interest comparing to before where the Institute could not bring cases to the Board of Equal Treatment. Since the changes took place outside the reference period, the Committee asks information on their

implementation in the next report (European Equality Law Network, News Report on Amendments to the Act on the Board of Equal Treatment, 15 January 2016).

The Committee takes note that according to the European Equality Law Network, the most important recent case law on anti-discrimination has dealt with disability and age. In two cases on age discrimination the Danish Supreme Court concluded that a public employer is not allowed to use Section 2a(3) of the Salaried Employees Act, if the employee temporarily does not wish to exercise his right to retirement because of the fact that he wants to pursue a professional career. The Supreme Court established that it is illegal to cut off such public employees from their right to severance allowance (European Equality Law Network, Country Report on Non –discrimination, 2015)

The Committee requests information on cases regarding discrimination at work on any grounds brought before the Board of Equal Treatment with the assistance of the Danish Institute for Human Rights and the courts. It also asks information on the activities of the anti-discrimination unit and their impact in combating discrimination in employment.

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

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

According to the report, prisoners are not required to work in Denmark. Work of prisoners is separated into 2 sectors – the prison industry (farming, market gardening and forestry; textile, sewing, upholstery etc.; graphic industries and bookbinding; metal workshops; production of furniture, windows, doors etc. production of kitchens; assembly tasks for private companies) and internal service / domestic work (cleaning and housekeeping; carpentry; painting; plumbing and heating; metalwork; parks and gardens). The report also refers to the information provided during the previous evaluation cycle concerning working conditions, including remuneration.

In its previous conclusion (Conclusions XX-1/2012), the Committee asked that the next report provide further information on prison work, taking account of the Statement of Interpretation on Article 1§2. As the report does not provide any information on the social protection of prisoners, the Committee reiterates its request that the next report include relevant information on this point (in the sphere of employment injury, unemployment, health care and old age pensions). The Committee points out that if the information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 1§2 of the 1961 Charter regarding prohibition of forced labour in respect of work of prisoners.

### ***Domestic work***

In its previous conclusion (Conclusions XX-1/2012), the Committee referred to its Statement of Interpretation and the questions asked in the general introduction to Conclusions XX-1/2012 concerning the existence of forced labour in the family context. As the present report does not provide any information on the laws enacted to combat this type of forced labour or on the steps taken to apply such provisions and monitor their application, the Committee asks that the next report include the required information on this point. The Committee points out that if the information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 1§2 of the 1961 Charter regarding prohibition of forced labour in respect of domestic workers and within family businesses.



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

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

Four months' military or civil service is compulsory in Denmark. Conscientious objectors are allowed to do civil service following a simple declaration of their reasons for refusing to do military service.

In its previous conclusion (Conclusions XX-1/2012), the Committee pointed out that any minimum period of service in the armed forces must be of a reasonable duration and in cases of longer minimum periods due to education or training that an individual has benefitted from, the length must be proportionate to the duration of the education and training. Likewise any fees/costs to be repaid on early termination of service must be proportionate. The Committee asks that the next report provide updated information on the situation in Denmark from this point of view.

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

The Committee notes from the report that unemployment benefits are suspended for three weeks if the jobseeker refuses to take up proposed employment without one of the 23 valid reasons that may justify such a refusal (*selvforskyldt ledig*). The allowances cease if the beneficiary refuses a job offer for the second time within twelve months from the date when the unemployment benefit was granted for the first time. The benefits can be restored once the person has worked in a regular job for at least 300 hours within three months or 276 hours within a 12-week period.

The Committee recalls that every time the competent authorities decide to terminate or to temporarily suspend unemployment benefits on the grounds that the recipient has refused an offer of employment, it must be possible for the courts to examine the decision in accordance with the rules and procedures provided for in the legislation of the State which has taken the decision. It asks that the next report stipulate whether Danish law provides for a legal remedy in such cases (Statement of Interpretation on Article 1§2, Conclusions XX-1/2012).

#### ***Privacy and work***

In its previous conclusion (Conclusions XX-1/2012), the Committee referred to the Statement of Interpretation on Article 1§2 and the general question on workers' right to privacy. As the present report does not provide any information on this point, the Committee asks that the next report include relevant information on the measures taken to ensure that interference in workers' private lives is prohibited and, where necessary, sanctioned.

Pending receipt of the information requested, the Committee considers that with regard to the prohibition of forced labour and the other aspects of the right to earn one's living in an occupation freely entered upon, the situation is in conformity.

#### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Denmark is in conformity with Article 1§2 of the 1961 Charter.

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

### *Paragraph 3 - Free placement services*

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

The report indicates that following the Employment reform, since 1 January 2014, the Danish Agency for Labour Market and Recruitment is the national agency responsible for public employment service operating under the authority of the Ministry of Employment. The Agency has 3 regional labour market divisions and 94 job centres run by municipalities at the local level. The Social Partners are involved in the management, supervision and monitoring of the Danish Agency for Labour Market and Recruitment by law.

In reply to the Committee's request to provide information on quantitative indicators used to assess the effectiveness in practice of free employment services, the report indicates that data is not available on the placement rate. The justification presented is that placement is mainly made through the online tool [www.jobnet.dk](http://www.jobnet.dk). The Agency for Labour Market and Recruitment is responsible for the website, and one of the main functions is a CV bank available to employers. Thereby, match between unemployed and employers can be made without direct contact to the job centre. The report indicates only the number of vacancies for the reference period: in 2011 – 126,168; in 2012 – 148,438; in 2013 – 166,656; in 2014 – 180,561.

The Committee reiterates its request and asks for the next report to contain information on the following points: number of jobseekers and unemployed persons registered with the Agency for Labour Market and Recruitment; number of vacancies notified to the Agency; number of persons placed via the Agency; placement rate (placement made by the employment services as a share of notified vacancies); average time taken by the Agency to fill a vacancy; placements by the Agency as a percentage of total employment in the labour market; respective market shares of public and private services (the market share is measured as the number of placements effected as a proportion of total hirings in the labour market).

Furthermore, the Committee asks for data on: the number of persons working in public employment services (at central and local level); the number of counsellors involved in placement services; and the ratio of placement staff to registered jobseekers.

The Committee also asks for the next report to provide information on private employment agencies and how they are licensed, operate and co-ordinate their work with the Danish Agency for Labour Market and Recruitment.

### *Conclusion*

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

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

### *Paragraph 4 - Vocational guidance, training and rehabilitation*

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

As Denmark has accepted Article 9, 10§3 and 15§1 of the 1961 Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to vocational guidance and training for persons with disabilities are examined under these provisions.

The Committee considered the situation to be in conformity with the 1961 Charter as regards measures relating to vocational guidance (Article 9) and vocational training and retraining of workers (Article 10§3).

It considered however that the situation was not in conformity with the 1961 Charter as regards measures concerning training for persons with disabilities (Article 15§1) on the ground that it had not been established that effective remedies are guaranteed for persons with disabilities who allege discriminatory treatment in the field of vocational training. Accordingly, the Committee considers that the situation is not in conformity with Article 1§4 on the same ground.

### *Conclusion*

The Committee concludes that the situation in Denmark is not in conformity with Article 1§4 of the 1961 Charter on the ground that it has not been established that effective remedies are guaranteed for persons with disabilities who allege discriminatory treatment in the field of vocational training.

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

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

In response to the Committee's question (Conclusions XX-1 (2012)), the report indicates that access to vocational guidance within the education system is not, as such, subject to conditions regarding length of residence or employment. The Committee asks the next report to indicate whether access to vocational guidance in the labour market is also ensured without discriminatory conditions to nationals of other States Parties lawfully resident or regularly working on the territory of Denmark. It reserves in the meantime its position on this point.

As regards measures concerning vocational guidance of people with disabilities, both within the education system and the labour market, the Committee refers to its assessment under Article 15 of the Charter.

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

The Committee previously noted (Conclusions XX-1 (2012)) that the Ministry of Education is responsible for continuous supervision and development of guidance services in the educational sector and that various guidance providers and options were available:

- Youth Guidance Centres, at municipal level, are responsible for guidance related to the transition from compulsory school to youth education;
- 5 Regional Guidance Centres are responsible for guidance related to the transition from youth education to higher education;
- Centres for Adult Education and Continuing Training (VEU-centre) offer guidance related to a wide range of education programmes for adults, including courses at lower and upper secondary level and highly specialized continuing vocational training courses (AMU);
- eGuidance provides guidance to all citizens via various virtual communication channels (in particular, the National Guidance Portal [www.Uddannelsesguiden.dk/www.ug.dk](http://www.Uddannelsesguiden.dk/www.ug.dk)).

The report refers to a comprehensive reform of vocational education and training (VET), which was adopted in June 2014 by the Danish Parliament and involved changes within the field of guidance. In particular, vocational guidance at school has been extended, a one-week compulsory vocational guidance course has been introduced as from the 7th grade. Individual guidance is also available for the pupils who have being assessed not-ready for further education in 8th grade and bridge building-courses are obligatory for pupils in 9th grade if they are assessed not-ready for youth education in 8th grade.

As regards the qualifications required in order to practice guidance, the Committee refers to its previous conclusions (Conclusions XX-1 (2012)). According to the report, it is estimated that the youth guidance centres employ a total of about 1,000 counsellors who cater for around 650 000 persons below 25 years of age every year. The report further indicates that the total expenditure of the Ministry of Education on guidance activities ranged from DKK 67 300 000 (corresponding to €9 039 380) in 2011 to DKK 53 100 000 in 2014 (€7 132 110). However, the report points out that the major part of expenditure on guidance activities is financed by the 98 local authorities/municipalities. The municipalities are obliged to provide guidance activities, which are regulated by the overall national legislation, but it is up to every single municipality to decide on the level of expenditure on guidance activities.

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

The report indicates that the abovementioned guidance providers are also available to unemployed people. In addition, vocational guidance for unemployed persons is specifically provided by the Public Employment Services. As regards the Committee's request of information on expenditure, staffing and number of beneficiaries, the report states that any

figures pertaining to vocational guidance for unemployed persons may be provided by the Ministry of Employment. No such information is however provided in the report.

The Committee reiterates that, in order to comply with Article 9 of the Charter, vocational guidance must be guaranteed within the school system and in the labour market and must be provided:

- free of charge;
- by trained staff and in sufficient numbers;
- to a significant number of persons, attempting to reach the widest possible audience;
- and with a sufficient budget.

The Committee asks for up-to-date information on these items to be systematically provided in all future reports, especially figures on the resources, staff and number of beneficiaries of vocational guidance in the labour market. It also asks for the next report to state what information tools (media, brochures, events, etc.) are implemented in the area of vocational guidance in the labour market. In the absence of any information on these points, the Committee reiterates its request and holds that, if the next report does not provide information in this respect, there will be nothing to establish that the situation is in conformity with the Charter. It reserves in the meantime its position on this point.

#### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Denmark is in conformity with Article 9 of the 1961 Charter.

## **Article 10 - Right to vocational training**

### *Paragraph 1 - Promotion of technical and vocational training ; access to higher technical and university education*

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

### ***Secondary and higher education***

The Committee notes that in June 2014 a comprehensive reform of vocational education and training (VET) was adopted by the Danish Parliament. According to the report, the reform, which came into force in August 2015, will contribute to more young people choosing VET, more VET students completing a VET programme and to improving the quality of the programmes. The reform also includes a new one-year basic course for the youngest students (under 25 years) coming directly from compulsory school.

According to the report, admission requirements have introduced possibilities for taking higher-level courses as well as programmes including upper secondary general and vocational qualification and better opportunities for further and higher education. A new two-year combined youth education has been established targeting persons under 25, who do not possess the qualifications for completing a vocational or general upper secondary education. This programme is aimed at obtaining employment and further education.

The Committee recalls that under Article 10§1 the States Parties should take measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market. They should ensure that qualifications acquired in general secondary and higher education are geared towards helping students find a place in the labour market. The Committee asks what measures are taken in this regard.

### ***Measures to facilitate access to education and their effectiveness***

The access to technical and vocational training is regulated in Chapter 2 of Consolidation Act 789 of 16 June 2015 on VET. In principle, it is required of applicants who do not have an apprenticeship agreement, that they have left the primary school system with a certain level of marks in Danish and math combined with a positive assessment of their preparedness to study, but this may be waived as a consequence of a test and/or an interview.

The legal framework in regard to granting facilities for access to higher education is Act no 961 of 1 September 2014 on a study qualifying exam in conjunction with VET and section 37 of Executive Order no 1010 of 22 September 2014 on VET. It enables the student to obtain upper secondary general skills within a VET-programme. After completion the student is qualified for employment in the profession corresponding to the VET and has direct access to higher education programmes as well.

### *Conclusion*

The Committee concludes that the situation in Denmark is in conformity with Article 10§1 of the 1961 Charter.

## **Article 10 - Right to vocational training**

### *Paragraph 2 - Apprenticeship*

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

The Committee takes note of the changes that have been made to the legal framework for school-based practical training, as set out in the relevant chapter of the Consolidation Act no. 510 of 19 May 2010 and later Consolidation Acts. Namely, it notes that Act No 1348 of 21 December 2012 introduced a system of schools being chosen to act as placement centres and set out a time limit for the commencement of the school based practical training after the first part of the VET. These centres are responsible for cooperating with the local business community on establishing apprenticeships, as well as offering school-based practical training for students who do not conclude a training agreement with a company.

In reply to the Committee's question the report states that the employment rate for all VET students was 81% in 2014 according to the Monitoring report for Denmark from the European Commission. Most of the students in school based training have so far succeeded in getting an apprenticeship contract.

The Committee wishes to receive updated information regarding the number of students enrolled in apprenticeships and the total spending, both public and private as well as the division of time between practical and theoretical learning.

### *Conclusion*

The Committee concludes that the situation in Denmark is in conformity with Article 10§2 of the 1961 Charter.

## **Article 10 - Right to vocational training**

### *Paragraph 3 - Vocational training and retraining of adult workers*

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

#### ***Employed persons***

The Committee notes from Cedefop ( VET in Europe, Country report, Denmark, 2014) that Adult Vocational Training (AMU) programmes provide participants with skills and competences applicable in the labour market. The programmes may either deepen the participant's existing knowledge in a particular field, or broaden it to related fields. AMU programmes are targeting both low-skilled and skilled workers and are open to all persons resident or employed in Denmark. The objectives are to contribute to maintaining and improving the vocational skills and competences of participants in accordance with the needs on the labour market, to contribute to solving labour market restructuring and adaptation problems and to give adults the possibility of upgrading competences for the labour market as well as personal competences to obtain formal competences in vocational education and training. Approximately 3,000 AMU programmes meet the continuing training needs of adult unskilled and skilled workers and technicians. About 200 new programmes are developed each year.

The Committee notes that the Programmes are generally of a relatively short duration, ranging from half a day to 50 days, with an average duration of one week. They are grouped into three broad categories, such as specific job/sector related competences, such as gaining new technical knowledge, general competences such as use of ICT and personal competences such as communication skills.

#### ***Unemployed persons***

According to the report, the employment reform of 2014 introduced an increased focus on boosting the education level of the unemployed, both the unemployed with outdated education as well as the unemployed with the least education. Through 11 continuing training and education committees each one responsible for a specific sector of the labour market, the social partners play a major role in the decision on which specific adult vocational training programmes are offered.

According to the report, from August 2015, unskilled unemployed over 30, who received unemployment benefits, will get the chance to apply for and finish one of the 107 vocational training programmes (VET). The programmes must be available within the benefits duration of two years, and there must be a specific agreement between the unemployed and the job centre. The unemployed will get the chance to follow the new VET programmes for adults aged 25 or older (EUV). These programmes build on their prior learning and skills of the unemployed. The Committee wishes to be informed about the total number of participants in these programmes out of the total number of unemployed persons.

The Committee notes from Cedefop that some training provisions of AMU specifically target unemployed people and people at risk of exclusion. Since 2007 91 job centres under municipal jurisdiction are responsible for unemployed persons through a number of labour market instruments, such as special courses at AMU training centres to improve skills and competences to help ensure that training offers correspond to local skills needs.

The Committee wishes to be informed of the activation rate – i.e. the ratio between the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures.

#### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Denmark is in conformity with Article 10§3 of the 1961 Charter.



## **Article 10 - Right to vocational training**

### *Paragraph 4 - Encouragement for the full utilisation of available facilities*

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

### **Fees and financial assistance**

The Committee notes from the report that the State Educational Grant and Loan Scheme (SU) is managed by the Danish Agency for Higher Education in collaboration with the educational institutions and under the auspices of the Ministry of Higher Education and Science. The system is governed by Act No 39 on Educational Support of 15 January 2014. All students enrolled in higher education are entitled to a number of monthly grants corresponding to the prescribed duration of the chosen study, plus 12 months.

In its previous conclusion (Conclusions 2012) the Committee found Denmark was not in conformity with Article 10§4 of the Charter on the ground that non- EU nationals did not enjoy equal treatment with regard to financial assistance for education and training. In particular, the rules in place amounted to a length of residence requirement of two years for these nationals to be eligible for student aid (SU).

In this respect, the Committee notes from the report under the Danish legislation non-Danish nationals may qualify for receiving SU on the same terms as Danish nationals, if they have the rights to social benefits under EU-law or have a certain degree of connection to Denmark. The nature of this connection is defined in seven provisions that are enumerated in the Danish legislation.

The seven provisions also include two circumstances in which there is a two years' residency requirement. The residency requirement is combined with either marriage to a Danish citizen or with having had employment involving at least 30 hours of work a week.

The Committee further notes from the report of the Governmental Committee ( GC(2013)20, §106) that young people from other countries come to Denmark receive an education. However, for economic reasons, it is not possible to ensure access to SU for everyone at risk of seeing degrade the support that is offered to students today. In this context, the Government decided to establish certain restrictions, one of which is to require applicants to have a certain degree of connection to Denmark.

The Committee recalls that under Article 10§5 of the Charter equality of treatment as regards access to financial assistance for studies shall be provided to nationals of other States Parties lawfully resident in any capacity, or having authority to reside by reason of their ties with persons lawfully residing, in the territory of the Party concerned. Students and trainees, who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training are not concerned by this provision of the Charter. Article 10§5 does not require the States Parties to grant financial aid to any foreign national who is not already resident in the State Party concerned, on an equal footing with its nationals. However, it requires that nationals of other States Parties who already have a resident status in the State Party concerned, receive equal treatment with nationals in the matters of both access to vocational education (Article 10§1) and financial aid for education (Article 10§4).

Those States Parties who impose a permanent residence requirement or any length of residence requirement on nationals of other States Parties in order for them to apply for financial aid for vocational education and training are in breach of the Charter.

The Committee considers that the situation which it has previously found not to be in conformity with the Charter has not changed. Non-EU nationals are still subject to a length of residence requirement of two years to be eligible for the State Educational Grant and Loan Scheme (SU). Therefore, the Committee reiterates its previous finding of non-conformity.

### ***Training during working hours and efficiency of training***

The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter. The Committee wishes to receive updated information in the next report.

#### *Conclusion*

The Committee concludes that the situation in Denmark is not in conformity with Article 10§4 of the 1961 Charter on the ground that non-EEA nationals are subject to a length of residence requirement of two years to be eligible for the State Educational Grant and Loan Scheme (SU).

## **Article 15 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement**

### *Paragraph 1 - Education and training for persons with disabilities*

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

The Committee observes that to assess the equal access of children and adults with disabilities to education and vocational training, it should be systematically informed of the data concerning the total number of persons with disabilities, including the number of children, the number of students with disabilities following mainstream and special education and vocational training, and the percentage of students with disabilities entering the labour market following mainstream or special education and/or training. It asks that the next report contain this information.

On 24 July 2009 Denmark ratified the UN Convention on the Rights of Persons with Disabilities and on 23 September 2014 it accepted the Optional Protocol authorising individuals or groups of individuals to lodge an application with an international monitoring body if they consider that the rights enshrined in the Convention have been violated.

### **Definition of disability**

As the report does not present any information on this point, the Committee asks whether new initiatives taken during the reference period have led to a new definition of disability.

### **Anti-discrimination legislation**

In its previous conclusions (Conclusions XX-1 (2012), XIX-1 (2008) and XVIII-2 (2007)), the Committee found that the situation was not in conformity with the Charter on the ground that there had no legislation explicitly protecting people with disabilities from discrimination in education. The Committee noted in its previous conclusions (Conclusions XX-1 (2012), XIX-1 (2008) and XVIII-2 (2007)), that although Danish legislation on education provides all children with the right to free compulsory education. The report underlines that, within the process of ratification of the UN Convention on the rights of persons with disabilities, there was a thorough review of Danish law in 2009 to assess whether it was in conformity with the specific provisions of the Convention. It refers to draft resolution (B) 43 on equal treatment and equal opportunities for people with and without disabilities adopted in 1993, which recommends all state and municipal authorities as well as private companies and organisations to comply with the principle of equal opportunities and equal treatment of persons with disabilities.

Moreover, according to Denmark's initial report to the Committee on the Rights of Persons with Disabilities, the national disability policy action plan, entitled "One society for everyone" was drawn up and adopted in 2013. This plan comprises five sections: coherence of the efforts made by the different ministries and municipalities; education and employment of persons with disabilities; innovation and new technologies; better knowledge of matters concerning persons with disabilities; and promotion of a diverse and inclusive civil society. The Committee asks that the next report provide up-dated information on the implementation of this action plan.

### **Education**

The report states that the percentage of pupils with disabilities in mainstream public schools was 95.2% in 2014-2015 compared to 94.4% in 2010-2011. According to the 2014 figures provided by the Academic Network of European Disability experts (ANED), the percentage of persons with disabilities aged between 30 and 34 who had completed higher education was 37% compared to 57.2% for non-disabled people. The percentage of young people with disabilities aged between 18 and 24 who had dropped out of school was 15.3% compared to 9.9% for non-disabled young people.

The report presents the various initiatives taken during the reference period to promote the inclusion of pupils with disabilities in primary and lower secondary schools:

- With regard to state schools, in 2012 the Government adopted new legislation on inclusive education. According to the report, the definition of special education was changed to “teaching in special schools and special classes or instruction in regular classrooms, where students receive support for at least 9 hours a week”. The report also states that the Ministry for Children, Education and Gender Equality has established an outreach consulting unit, which advises municipalities and schools on the development of strategic skills.
- With regard to private schools, the report states that in 2012 the financial support system was changed so that private schools can now apply for specific grants towards expenditure incurred in connection with the teaching of pupils with learning disabilities or other special needs. Schools also receive a grant for the general expenditure incurred in connection with pupils in need of support for less than 9 hours a week.

According to the Committee on the Rights of Persons with Disabilities of the United Nations, an independent complaints mechanism exists. The right to complain is reserved to those receiving more than 9 hours of support per week (this mainly concerns intensive and specialized support). This right does not apply to children who need less than 9 hours’ special education per week. The Committee invites the Government to provide observations on this.

The report refers to the law on the Council of Youth Education, adopted by the Danish Parliament in June 2014, which advises the Minister for Children, Education and Gender Equality on transversal issues and ensures that all young people undergo post-compulsory vocational training.

The Committee asks that the next report contain information on the question of whether deaf pupils have the right to choose to be educated in sign language and what training teachers are given so that they are in a position to set up an inclusive system of education. It also asks to what extent pupils with disabilities receive the support and necessary accommodations, within the general education system, to facilitate their effective education.

### ***Vocational training***

The Committee refers to its previous conclusions (Conclusions XX-1 (2012), XIX-1 (2008), XVIII-2 (2007) and XVI-2 (2004)), where it had noted that mainstreaming also applies to vocational training and that special education assistance is available to students with (physical and intellectual) disabilities in general upper secondary education, vocational education and training and higher education but not in adult education, except for people in employment. Students with disabilities can receive a financial support for their studies in further education.

In its previous conclusions (Conclusions XX-1 (2012)), the Committee asked that the next report provide details on the number of students with disabilities attending vocational training in mainstream and special education as well as the number of students with disabilities in university. The Committee notes from the report that there was an increase in the number of pupils with disabilities receiving educational assistance during the reference period (from 4 262 to 6 625 in secondary education, from 3 001 to 5 943 in higher education and from 6 093 à 7 670 in vocational education establishments).

The Committee asked (Conclusions XX-1(2012) et XIX-1 (2008)) for information concerning the impact of vocational training on the subsequent integration of persons with disabilities in the labour market and the remedies available in the event of discrimination or lack of access to vocational training. Since the report does not provide information on these issues, the Committee reiterates its questions and concludes that, in the absence of this information, it is not established that the situation is in conformity with the Charter on this point.

The report states that, in 2014, the Danish Parliament adopted the Act on Vocational Training, establishing post-compulsory vocational training for including special assistance. This type of education was to be introduced in August 2015, (outside the reference period), so the Committee will examine it in its next conclusion.

The report states that young persons with special needs who are unable to attend mainstream higher education, even with special educational assistance, must be offered the opportunity to attend an individual 3-year educational programme that is specially adapted to their varying needs. The educational programme was started in 2007. The target groups in this programme are young people with intellectual disabilities or general support needs.

The report states that, during the reference period, some initiatives focused on pupils suffering from dyslexia and pupils with mental health difficulties and development disorders. The report refers to the project run by the National Agency for Education and Quality, aimed at determining new forms of support for these groups. The project was to be presented in 2015 (outside the reference period). The Committee asks to be informed of the results obtained.

The report also presents the “Best possible transitions” project run by the Ministry for Children, Education and Gender Equality with the aim of promoting the transition of disabled pupils and students between education and employment. The Committee asks to be informed of the progress made.

#### *Conclusion*

The Committee concludes that the situation in Denmark is not in conformity with Article 15§1 of the 1961 Charter on the ground that it has not been established that effective remedies are guaranteed for persons with disabilities who allege discriminatory treatment in the field of vocational training.

## **Article 15 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement**

### *Paragraph 2 - Employment of persons with disabilities*

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

### ***Employment of persons with disabilities***

The Committee points out that it 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.

According to the parallel report by the Danish Institute for Human Rights to the Committee on the Rights of Persons with Disabilities, only 44% of working-age adults with disabilities have a job compared to almost 78% of non-disabled working-age adults. According to the report of the Academic Network of European Disability experts (ANED), in 2012 the percentage of women with disabilities between 20 and 64 years of age in employment was 44.8% compared to 71.2% for non-disabled women and the percentage of men with disabilities was 55.4% compared to 79.1% for non-disabled men. The rate of unemployment for women with disabilities was 18.7% compared to 8.3% for non-disabled women while the unemployment rate for men with disabilities was 15.5% compared to 7.5% for non-disabled men.

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

The Committee notes from the report that there has been no change to the legislation examined in the Committee's previous conclusion (Conclusions XX-1 (2012)).

The Committee draws attention (see Conclusions XX-1 (2012) and XIX-I (2008)) to the fact that a case was referred for a preliminary ruling to the Court of Justice of the European Union in 2011 to clarify the concept of disability, whether the reduction of working hours could constitute a reasonable accommodation and whether Danish law was in conformity with EU legislation. The Committee observes that the Court in its judgement (C-335/11) of 11 April 2013, found that a reduction in working hours may constitute one of the accommodation measures and that it is for the national court to assess whether this reduction as an accommodation measure, represents a disproportionate burden on the employer.

Furthermore, in its Decision No. 57/2011, the Board of Equal Treatment concluded that "sheltered employment" was not covered by the Act on the Prohibition of Discrimination in the Labour Market. Other judicial decisions seem to confirm that the Danish courts do not consider sheltered employment to be "work". The Committee refers to its previous Conclusions (XIX-I) where it had noted that production did not seem to be considered to be the main aim of sheltered employment. It reiterates nevertheless that where production is the main aim of work done, it is the nature of the employment which must determine the level of remuneration for persons with disabilities and remuneration must be fair (Conclusions XVIII-2, Czech Republic). The Committee asks for clarification on the situation of workers with disabilities on this point.

In its previous conclusion (Conclusions XX-1 (2012)), the Committee asked what remedies were available to people in sheltered employment in case of alleged discrimination. In reply, the report refers to the law on the prohibition of discrimination on the labour market which provides such remedies.

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

In addition to the initiatives already mentioned in the previous conclusion (Conclusions XX-1(2012)), the Committee notes that, during the reference period, the Government carried out

several major reforms aimed at offering more persons with disabilities the possibility to take part in the labour market. The report provides the following information:

- The Reform of Disability Pension and the Flexi-Job Scheme (2012). The flexi-job scheme focuses on persons with a very limited ability to work.
- The cash benefit reform (2013). According to the report, a preliminary impact study of the initiatives taken in the youth field under this reform drawn up by the Ministry of Employment shows that the reform has had a positive effect on the flow into education and employment among the under-thirties.
- The Employment Reform (2014) amends employment measures for all those who are unemployed, including those with a disability or impairment. The main aim of the reform is to ensure an overall boost of the education level of those unemployed with the fewest skills through a series of targeted initiatives (see the report for more details).
- The Reform of Sickness Benefits (2014). The report indicates that prior to this reform sickness benefits were paid for 22 weeks within 9 months; this period can now be extended if the recipient is still unable to work because he or she is ill and if the required conditions are met.

The report refers to the Act on Compensation for Disabled Persons in Employment, which aims to enhance and stimulate the possibilities of employing persons with disabilities and retaining them in the market, and to offer them the same possibilities of pursuing a trade or profession as persons without disabilities. This Act comprises four schemes, including personal assistance for persons with disabilities in employment; wage subsidies for the employment of newly qualified persons, privileged access to public employment for persons with disabilities who have the same qualifications as the other non-disabled applicants and the granting of subsidies for workstation design and accommodations.

The report also presents an analysis of disability, education and occupation (*Handicap, Uddannelse og Beskæftigelse*) published in 2014, which describes the situation with respect to the integration of students with disabilities into the labour market: 24% of the persons with a mental health disorder, 45% of those with a reduced mobility, and 64% of those with a sensory disability have found employment. The report states that the employment rate of persons with disabilities is lower than of persons without disabilities, irrespective of their level of education.

According to the report of the Committee on the Rights of Persons with Disabilities, the National disability policy action plan, entitled “One society for everyone” was drawn up and adopted in 2013. This plan comprises five sections: coherence of the efforts made by the different ministries and municipalities; education and employment of persons with disabilities; innovation and new technologies; better knowledge of matters concerning persons with disabilities; and promotion of a diverse and inclusive civil society. The Committee asks that the next report provide up-dated information on the implementation of this action plan and the concrete outcome of the initiatives taken.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Denmark is in conformity with Article 15§2 of the 1961 Charter.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 1 - Applying existing regulations in a spirit of liberality*

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

It notes that all EEA citizens, as well as their family members, have free access to the labour market. During the reference period, a work permit was required for the nationals of the following states parties to the Social Charter: Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia (until 1 July 2013), Georgia, Republic of Moldova, Montenegro, Russian Federation, Serbia, "The former Yugoslav Republic of Macedonia", Turkey and Ukraine.

### **Work permits**

The Committee refers to its previous conclusion, where it noted the schemes under which foreign nationals could be recruited in conformity with the Danish Aliens Act (section 9 a (2)):

- the *Greencard scheme*, according to which residence and work permits may be granted on the basis of an individual evaluation using a points system designed to assess whether the applicant might find qualified work in Denmark. During the reference period, the points were based on educational level, language skills, work experience, adaptability and age, and the residence permit was granted for up to 3 years, with a possible one-year extension upon certain conditions;
- the *Positive list*, according to which foreigners may be offered a job in a profession currently experiencing a shortage of qualified professionals. Foreign nationals who have been hired on this list will immediately be eligible for a residence and work permit, on the condition that the applicant has a specific job offer, and that the proposed salary and employment conditions correspond to Danish standards. The permit can be extended, provided that the foreigner is still in the same job, on the same terms and conditions;
- the *Pay limit scheme*, according to which foreign nationals can get a residence and work permit, without needing a labour market scrutiny statement, if they have a specific job offer with a gross annual pay of no less than DKK 375 000 (€50 368 at the rate of 31/12/2014). The permit can be extended, provided that the foreigner is still in the same job, on the same terms and conditions;
- the *Corporate scheme*, according to which foreign nationals who are employed in a Danish company's foreign affiliate can get a residence permit if they are to be employed in the same company in Denmark. In these cases, a labour market scrutiny statement is not needed, but the proposed salary and employment conditions must correspond to Danish standards;
- the *Labour market ties – residence permit*, issued for example in case of asylum or family reunification, when the extension of the permit of an alien who has been regularly employed or self-employed for a prolonged period is justified by employment or business considerations;
- *other types of salaried work – residence permit*, granted only if substantial professional or labour market considerations so warrant, such as if there are no qualified professionals residing in Denmark or among the EU/EEA nationals.

The Danish Aliens Act, according to the report, was amended several times since 2010. In particular, significant changes have been introduced with the Reform of International Recruitment from December 2014, which aims at improving the recruitment of foreign labour. This reform entered into force on January 1, 2015 (out of the reference period). The Committee will assess the changes introduced, described in the report, during its next assessment of the situation's conformity with Article 18 of the Charter. It asks the next report to provide any relevant information to this effect.



During the reference period, according to the report, the requirement to obtain a work permit applied to immigrants coming to Denmark to seek employment or self-employment. A work permit was also issued to foreign nationals with a residence permit on the basis of exceptional reasons (in such cases the focus is on the purpose), on the basis of studies (section 25 (2) of the Aliens Order), or with a residence purpose as a religious preacher (section 25 (3) of the Aliens Order).

A work permit was on the other hand not required for foreigners who had been granted a residence permit according to the Greencard Scheme or for foreigners coming to Denmark on a non-employment basis, e.g. refugees, foreigners who were granted asylum, foreigners whose applications for asylum had been rejected but were allowed on the territory on humanitarian grounds; foreigners coming to Denmark in the framework of family reunification; permanent residents; former holders of Danish nationality; foreigners from Kosovo who had been granted temporary protection; foreigners granted a residence permit for exceptional reasons (section 14(1) of the Danish Aliens Act). Certain categories of foreigners could also be exempted from the requirement of a work permit on the basis of an order issued by the Minister for Immigration, Integration and Housing under Section 14(2) of the Danish Aliens Act. In 2015, out of the reference period, such an order was issued in respect for example of foreign personnel related to diplomatic missions or working in international transport (Aliens Order, Ministry of Immigration, Integration and Housing, Executive Order No. 375 of 20 March 2015). Under Section 24(2) of the Aliens Order, other categories of foreigners could be exempted from the requirement of a work permit for a period of three months: scientists and lecturers affiliated to a university or company in Denmark; artists participating substantially to a noteworthy artistic event; representatives on business trips for foreign firms or companies; fitters, consultants or instructors coming to fit, install, inspect or repair equipment, machines, software etc. or to instruct on their functioning; household staff of foreigners visiting Denmark for up to 3 months; professional athletes and sport coaches.

As regards self-employment permits, the report indicates that the Danish Agency for International Recruitment and Integration assesses the applications taking into account whether the proposed business presents a particular interest for the domestic market, whether the applicant foreigners can access sufficient financial means to run the business and whether their presence and involvement is vital to the business' establishment and day-to-day operation.

### ***Relevant statistics***

According to the OECD report 2015 on recent changes in migration movements and policies, the migration inflow to Denmark increased by 11% between 2013 and 2014, from 78 300 persons to 86 700. A total of 72 300 residence permits were issued in 2014, 11% more than in 2013. EU/EEA nationals accounted for almost half of all permits both in 2013 and 2014. In 2014, 41% of all permits were issued for employment reasons and 15% for family reasons. Close to 17 000 work permits were issued in 2014 to EU/EEA nationals and 12 400 to non-EU/EEA nationals. An 8% increase in the number of new work permits from 2013 to 2014 is due to more self-employed and accompanying family members.

The Committee takes note of the data provided in the report, in response to the Committee's request, concerning the number of applications made, granted and rejected in respect of nationals of States Parties to the Charter, other than EU/EEA countries. It notes that the number of applications made increased during the reference period (it was 1348 in 2014) and that almost 78% of such applications (1049) were granted in 2014, against 90% in 2013 and 81% in 2012. The rate of rejections remained however low, around 7% in 2014 (101 rejections), against 12% in 2013 and 2012.

As regards in particular the permits for salaried work granted after assessing the availability of domestic or EU/EEA candidates, the report states that the rejection rate was 10,9% in 2011, 13,4% in 2012, 14,5% in 2013 and 7,7% in 2014.

*Conclusion*

The Committee concludes that the situation in Denmark is in conformity with Article 18§1 of the 1961 Charter.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 2 - Simplifying existing formalities and reducing dues and taxes*

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

### ***Administrative formalities and time frames for obtaining the documents needed for engaging in a professional occupation***

The Committee refers to its conclusion under Article 18§1 for a description of the current work and residence permits system. It notes from the report that significant changes have been introduced with the Reform of International Recruitment, which entered into force on January 1, 2015 (out of the reference period). The Committee will consider these changes during its next assessment of the situation's conformity with Article 18 of the Charter. To this purpose, it asks the next report to provide any relevant updated information.

According to the report, prior to the abovementioned reform, there were no significant changes in the conditions and regulations for submitting an application. In this connection, the Committee had previously noted (Conclusions XX-1 (2012)) that applications for residence and work permits were assessed by the Danish Immigration service, pursuant to the Danish Aliens Act. The report also recalls that efforts aimed at facilitating the application process, by promoting the digitalisation of application procedures, have continued during the reference period.

The Committee previously noted that, upon certain conditions, applications for residence and work permits could be submitted in Denmark or from abroad (Conclusions XX-1 (2012)). In particular, applications for a residence and work permit can be handed in at one of the four International Citizen Service centres set up in Denmark in 2011 in order to serve foreign workers, their accompanying families and international students, collecting in one place all the services and authorities that they typically need to get in contact with in order to settle in Denmark. At these centres, foreigners can also get a tax and deduction card, a social security number, a medical card, help with job seeking and useful information about living and working in Denmark. In addition to these centres, as from 2008, there are in Denmark three "Work in Denmark" centres, providing a public employment service for highly qualified international candidates looking for a job in Denmark, and Danish companies searching for talented foreign employees.

As regards self-employment permits, the report indicates that the Danish Agency for International Recruitment and Integration assesses the applications taking into account whether the proposed business presents a particular interest for the domestic market, whether the applicant foreigners can access sufficient financial means to run the business and whether their presence and involvement is vital to the business' establishment and day-to-day operation. In response to the Committee's request of clarification on these criteria (Conclusions XX-I (2012)), the report explains that, during the reference period, the Regional Labour Market Council would assess whether there was a shortage of labour in relation to the concrete employment and whether the specific job could be considered as ordinary or non-ordinary employment. Normally, it was not possible to be granted a residence and work permit on the basis of unskilled or ordinary skilled labour. According to the report, the reference to "particular Danish business interests" no longer figures in the law, as revised (out of the reference period). The report furthermore states that, during the reference period, the processing of applications for residence and work permits for self-employed persons was based on a concrete and individual assessment of each case and there was no fixed minimum financial means required to obtain a self-employment permit.

The Committee asks the next report to indicate how long does it take, on average, for an applicant to obtain the requested residence and work permit (as employed or self-employed) or its renewal.

### ***Chancery dues and other charges***

The report indicates that, during the reference period, no change occurred as regards the fees for submitting applications and complaints in the areas of family reunification, study and work. This area was regulated during the reference period by section 9 (h) of the Danish Aliens Act. The report indicates that the level of fees for applying for a residence permit is reviewed at the beginning of every new year. The same fees apply to the renewal of permits.

The Committee notes that during the reference period (2011 to 2014) the fees increased of about 6,6%, i.e.:

- from €819 to €870 as regards the *Greencard scheme* (section 9 a (2)(1));
- from €406 to €433 as regards the *Positive list*, the *Pay limit* and the *Corporate schemes* (sections 9 a (2) (2), (3) and (4));
- from €523 to €558 as regards the *Labour market ties – residence permit* (section 9 a (2) (5)) as well as the permits concerning employed and self-employed persons under section 9 a (2) (6) of the Aliens Act.

The Committee recalls that under Article 18§2 of the Charter, the States Parties undertake to reduce or abolish chancery dues and other charges payable by foreign workers or their employers. It notes that in Denmark, during the reference period, the charges increased, which is not in conformity with the spirit of Article 18§2 of the Charter. It considers, however, that increases in chancery dues or other charges can be considered to be in conformity with Article 18§2 of the Charter as long as they are made for a good reason (for example in order to cover increased processing costs or inflation) and they are not excessive. – whether, for instance, such amount corresponds to the actual cost of processing the residence permit application – and whether it is planned to introduce measures to reduce costs for workers or employers. The Committee reserves in the meantime its position on this issue.

### ***Conclusion***

Pending receipt of the requested information, the Committee concludes that the situation in Denmark is in conformity with Article 18§2 of the 1961 Charter.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 3 - Liberalising regulations*

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

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

The Committee refers to its conclusion under Article 18§1 and its previous conclusions (Conclusions XX-1 (2012)) for an overview of the different permits available, under the Danish Aliens Act, authorising non-EU/EEA nationals to engage in gainful occupations (as employed or self-employed persons). It notes from the report that significant changes have been introduced with the Reform of International Recruitment, which entered into force on January 1, 2015 (out of the reference period). The Committee will consider these changes during its next assessment of the situation's conformity with Article 18 of the Charter. To this purpose, it asks the next report to provide any relevant updated information.

The Committee takes note of the data provided, in response to its question (Conclusions XX-1 (2012)), concerning the number of applications for work permits submitted by nationals of non-EU/EEA States, which remained relatively stable during the reference period, with a slight increase from 2013 to 2014 (9415 in 2011, 8093 in 2012, 9338 in 2013, 10070 in 2014). According to the report, although no statistics exists indicating specific grounds for refusal, most applications are refused because the conditions are not fulfilled or for lack of information. The Committee also refers to the statistical data examined under Article 18§1, where it noted in particular that the rejection rate of permits for salaried work granted after assessing the availability of domestic or EU/EEA candidates, was 10,9% in 2011, 13,4% in 2012, 14,5% in 2013 and 7,7% in 2014.

As regards the recognition of foreign certificates, professional qualifications and diplomas, with a view to facilitating the access to national labour market, the Committee notes from the "Work in Denmark" portal, that foreigners applying for a job in Denmark can have their educational qualifications assessed free of charge by the Danish Agency for Higher Education.

The Committee recalls that, under Article 18§3, a person who has been legally resident for a given length of time on the territory of another Party should be able to enjoy the same rights as nationals of that country. The restrictions initially imposed with regard to access to employment (which can be accepted only if they are not excessive) must therefore be gradually lifted. It asks the next report to indicate what conditions apply to the renewal of work permits and whether such conditions are eased or lifted after the person has been regularly working in the country for a certain period of time.

### ***Consequences of loss of employment***

The Committee previously noted that the conditions under which foreign nationals could change employment had become more flexible and that those who had been made redundant or had a fixed-term employment contract could be granted a six-month residence permit to look for a new job. The report confirms that this was still the case during the reference period when the foreigner had been granted a residence permit based on the Positive List and the Pay-Limit Scheme. The Committee asks what rules apply in respect of holders of other types of residence and work permits.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Denmark is in conformity with Article 18§3 of the 1961 Charter.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 4 - Right of nationals to leave the country*

The Committee takes note of the information contained in the report submitted by Denmark, as well in an addendum to the report submitted on 24 June 2016.

It recalls that under Article 18§4, States undertake not to restrict the right of their nationals to leave the country to engage in gainful employment in other Parties to the Charter. The only permitted restrictions are those which are prescribed by law 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.

According to the information submitted by the authorities, no restrictions apply to the right of nationals to leave the country, in order to engage in gainful employment abroad.

### *Conclusion*

The Committee concludes that the situation in Denmark is in conformity with Article 18§4 of the 1961 Charter.

## **Article 1 of the 1988 Additional Protocol - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex**

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

### ***Equal rights***

The Committee has previously examined the legal framework (Conclusions XIX-1 (2008), Conclusions XX-1 (2012)). It noted that the Equal Pay Act prohibits discrimination against women and men in connection with pay differentials.

The report indicates that in June 2014, the Danish Government amended the Equal Pay Act and adopted new legislation to extend the obligation to prepare annually gender-segregated pay statistics from employers employing 35 workers or more to employers employing 10 workers or more, of which at least 3 are men and 3 are women. This extends the scope of the regulation from approximately 2.24 million employees and 3.500 enterprises to approximately 2.7 million employees and 13.000 enterprises. The report indicates that enterprises will also receive gender-segregated pay statistics automatically and free of charge.

The Committee notes from a Direct Request of ILO-CEACR that the number of cases relating to dismissal on the ground of pregnancy or maternity leave between 2011 and 2014 did not decrease. For example, in 2014 a total of 47 alleged cases of discrimination based on pregnancy and childbirth were referred to either the courts or the Board of Equal Treatment, of which 23 were considered well founded (Direct Request (CEACR) – adopted 2015, published 105th ILC session (2016), Discrimination (Employment and Occupation) Convention, 1958 (No. 111)). The same source indicates that the Danish Institute for Human Rights provided independent assistance to victims of sex discrimination in 38 inquiries, including outside the labour market, between 2011 and 31 December 2014.

The Committee asks information on the case law developed by the courts and the Board of Equal Treatment regarding discrimination on the basis of gender in employment (including pregnancy and maternity leave).

In its previous Conclusions, the Committee has requested further information regarding the possibility for comparisons of pay outside the company directly involved in an equal pay case (Conclusions XX-1 (2012)).

The report indicates that in Denmark, the level of pay is regulated by the social partners through collective agreements or individual contracts. There is no statutory minimum wage, but the social partners must adhere to the provisions of the Equal Pay Act.

The report further indicates that according to the information provided by the Ministry of Employment, under the Equal Pay Act the individual employer is required to pay equal remuneration to women and men for equal work or work of equal value. The individual employer is only responsible under the Act in relation to his own employees, and not in relation to how other employers choose to remunerate their employees who perform comparable work or job functions. Thus, the report outlines that a comparison of pay conditions in one company with pay conditions in other companies in a specific equal pay case falls outside the scope of the Equal Pay Act.

The Committee emphasises that it examines the matter of equal pay both under the Article 4§3 of the 1961 Charter and Article 1 of the Additional Protocol to the 1961 Charter. It refers in this sense to its previous Conclusion on Article 4§3 where it provided clarifications with regard to the Committee's stand on the equal pay comparisons (Conclusions XX-3 (2014)).

The Committee recalls that in its Statement of Interpretation on Article 1 of the Additional Protocol (Conclusions XX-1 (2012)), the Committee held that equal treatment between women and men includes the issue of equal pay for work of equal value. Usually, pay

comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful this comparison can only be made across companies/undertakings. Therefore, the Committee requires that it be possible to make pay comparisons across companies. The Committee considers that that at the very least, legislation should require pay comparisons across companies in one or more of the following situations:

- cases in which statutory rules apply to the working and pay conditions in more than one company;
- cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment
- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding (company) or conglomerate.

The Committee recalls that in equal pay litigation cases the legislation should allow pay comparisons across companies only where the differences in pay can be attributed to a single source. For example, the Committee has considered that the situation complied with this principle when in equal pay cases comparison can be made with a typical worker (someone in a comparable job) in another company, provided the differences in pay can be attributed to a single source (Conclusions 2012, Netherlands, Article 20) or when pay comparison is possible for employees working in a unit composed of persons who are in legally different situations if the remuneration is fixed by a collective agreement applicable to all entities of the unit (Conclusions 2014, France, Article 4§3).

The Committee asks the next report to provide information in the light of these clarifications. In the meantime, it reserves its position on this point.

### ***Equal opportunities***

The Committee notes from Eurostat that the unadjusted value of gender pay gap (that is the difference between average gross hourly earnings of male paid employees and of female paid employees) stood at 16.3% in 2011, 18.8% in 2012, 16.4% in 2013 and 15.8% in 2014.

The Committee requests up-to-date information in the next report on the evolution of the gender pay gap and its causes.

The Committee notes ILO – CEACR that the wage gap in managerial positions was 21.59% in 2013. At the same time, in 2014 the employment rate of women was 69.8% compared to 75.8% for men, that more women worked part time in the public sector (35% compared to 15% of men) and that women retired earlier than men (Direct Request (CEACR) – adopted 2015, published 105th ILC session (2016), Equal Remuneration Convention, 1951 (No. 100)).

The Committee asks the next report to provide updated information on the concrete positive measures and actions taken to reduce the gender pay gap and to address the occupational gender segregation in employment/ to improve the access of women to a wider range of job opportunities at all levels, including sectors in which they are currently absent or under-represented.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Denmark is in conformity with Article 1 of the Additional Protocol to the 1961 Charter.





January 2017

## **1961 European Social Charter**

European Committee of Social Rights

Conclusions XXI-1 (2016)

### **GERMANY**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the 1961 European Social Charter (the 1961 Charter) and the 1988 Additional Protocol (the Additional Protocol). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure

The following chapter concerns Germany which ratified the 1961 Charter on 27 January 1965. The deadline for submitting the 33rd report was 31 October 2015 and Germany submitted it on 26 January 2016.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of the thematic group "Employment, training and equal opportunities":

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 1 of the 1988 Additional Protocol).

Germany has accepted all provisions from the above-mentioned group except Articles 10§4 and 15§3 and Article 1 of the 1988 Additional Protocol.

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

The conclusions relating to Germany concern 14 situations and are as follows:

- 10 conclusions of conformity: Articles 1§§1, 2 and 3; 10§§1, 2 and 3; 15§§1 et 2; 18§§2 and 4;
- 2 conclusions of non-conformity: Article 18§§1 and 3.

In respect of the other 2 situations related to Articles 1§4 and 9, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Germany under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

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

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 4 of the Additional Protocol).

The report should also contain information requested by the Committee in Conclusions XX-4 (2015) in respect of its findings of non-conformity due to a repeated lack of information:

- the right of migrant workers and their families to protection and assistance – equality regarding employment, right to organise and accommodation (Article 19§4).

The deadline for submitting that report was 31 October 2016.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

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

### *Paragraph 1 - Policy of full employment*

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

### ***Employment situation***

According to Eurostat, the real GDP growth rate decreased during the reference period (3.7% in 2011; 1.6% in 2014). However, the GDP growth rate remained beyond the EU 28 average which stood at 1.4% in 2014.

The overall employment rate increased during the reference period, namely from 65.3% in 2011 to 69.6% in 2014. This rate is well beyond the EU 28 average rate of 64.9% in 2014.

The male employment rate increased (75.4% in 2009; 78.1% in 2014) and stood 8% higher than the EU 28 average rate of 70.1% in 2014. The female employment rate also increased from 65.2% in 2009 to 69.5% in 2014 and thus remained well beyond the EU 28 average rate of 59.6%. The employment rate of older workers increased sharply by more than 9%; from 56.1% in 2009 to 65.5% in 2014. This rate was significantly higher than the EU 28 average rate of 51.8% in 2014.

The unemployment rate decreased further by 0.8% to 5.0% in 2014 which is less than half the EU 28 average rate of 10.2%.

The youth employment rate (% of active population aged 15-24) decreased from 8.5% in 2011 to 7.7% in 2014.

During the reference period the long-term unemployment rate (as a percentage of the active population aged 15 – 74) decreased further from 2.8% in 2011 to 2.2% in 2014.

The Committee notes that the economy in Germany slowed down during the reference period. However, its GDP growth rate stayed at a robust 1.6% in 2014 thus still being beyond the EU 28 average of 1.4%. The labour market indicators all show a very positive trend with in particular the unemployment percentage reaching an impressive low rate of 5.0%.

### ***Employment policy***

On January 2015, Germany established a statutory minimum wage of € 8.50 per hour. The Committee asks to be informed in the next report whether the new country-wide minimum wage had an impact on the labour demand.

The report lists the programmes on how Germany intends to integrate into the labour market disadvantaged groups such as the long term unemployed. The report gives particular attention to initiatives taken to increase the labour market participation of women. Germany aims for the same opportunities in working life for both women and men; it pursues the policy to overcome the existing pay gap which is still at around 23%.

The Committee notes from the report, that the activation rate in Germany (measured as participants in active measures per 100 persons wanting to work) was stable at about 30% during the reference period.

According to Eurostat, public expenditure on active labour market policies in Germany amounted to 1.6% of GDP in 2014 which was about the EU 28 average (where in 2011 the average public spending on active labour market measures as a percentage of GDP that year was 1.8%).

The Committee considers that the labour market policies implemented in Germany satisfy the obligations under Article 1§1 of the 1961 Charter in particular by the positive trends of the both the employment and unemployment indicators during the reference period.

*Conclusion*

The Committee concludes that the situation in Germany is in conformity with Article 1§1 of the 1961 Charter.

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

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

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

### **1. Prohibition of discrimination in employment**

The report indicates that Section 15 (1) of the General Act on Equal Treatment (*Allgemeines Gleichbehandlungsgesetz, AGG*) provides that the entitlement to compensation arises when the employer, negligently or intentionally, has behaved in a discriminatory way. Gross negligence need to be proven; mere negligence is in fact sufficient. The employer can be also held liable in those cases in practice where she/he, negligently or intentionally, fails in the obligation to avoid and, where appropriate, to eliminate prohibited discrimination within her/his organisation. The report adds that under Section 15 (2) of AGG, the employer is liable for compensation for non-pecuniary damages regardless of fault.

As regards discrimination on grounds of nationality, the Committee previously noted that there are no “collective provisions making employment in the public service of the Federation conditional on nationality. The same also applies to the Federal Länder and municipalities. Nationals of other State Parties may hence be employed in the German public service to exercise public authority.” It asked confirmation that there are no posts in the public/civil service that are reserved for German nationals due to the nature of the functions (Conclusions 2012).

The current report indicates that nationals of other Contracting States may be employed in German public service to carry out tasks which do not involve the exercise of higher – level authority. A person working in the public service in Germany belongs to one of two status groups: civil servants or employees subject to collective bargaining. The report further indicates that the exercise of higher – level authority on a day-to-day basis shall generally be left to those public service workers who have attained a position of particular status and trust (i.e. civil servants). The position of civil servant is open to anyone who is a national of (i) another European Union Member State or of (ii) another European Economic Area Member State or (iii) of a third country which has signed a treaty with the Federal Republic of Germany and the European Union granting a corresponding entitlement to recognition of professional qualifications. Should duties so require, only a German may acquire the status of civil servant (e.g. for key management functions in the highest national and federal state authorities or functions involving fundamental state secrecy and/or security interests).

The Committee previously noted that some professions like doctors and pharmacists are open only to Germans and specified groups of non-Germans, such as EU citizens and stateless people and it therefore concluded that the situation in Germany was not in conformity with Article 1§2 of the 1961 Charter on the ground that access for non-EU/EEA nationals to professions as doctors and pharmacists was restricted (Conclusions XX-1 (2012)).

The Committee notes from the Report of the Governmental Committee that following the Law to improve the assessment and recognition of vocational qualifications obtained abroad, the Federal Medical Practitioners’ Act and the Federal Pharmacies’ Operation Regulation were amended with effect from 1 April 2012. In this context, the provisions in question in Section 3 of the Federal Medical Practitioners’ Act and in Section 4 of the Federal Pharmacies’ Operation Regulation were repealed. The license to practice as a physician or as a pharmacist is now awarded according to applicable law and regardless of the applicant’s nationality (Governmental Committee Report concerning Conclusions XX-1 (2012) of the 1961 Charter). The Committee takes note of this positive development and it therefore concludes that the situation is now in conformity with the 1961 Charter on this point.

With regard to measures taken to eliminate discrimination in employment, the report mentions the support programme "Integration through Training" (IQ) which has "intercultural skills development and non-discrimination" as one of its fields of activity. The programme aims to make it possible for people with a migrant background to participate in working life on an equal footing and to develop strategies to handle diversity in German society and to introduce more diversity in public administration and in business.

The Committee notes from ILO –CEACR that according to the expert reports commissioned under the Filling Gaps research project among persons with a migrant background, those from Islamic communities reported the highest levels of discrimination. On the basis of these reports, the Federal Anti-Discrimination Agency (FADA) has established the Anti-Discrimination Networks support programme in order to provide advice to those affected by discrimination. The Committee further notes that as of April 2013, the FADA had received 9,300 queries related to the grounds of discrimination in the Equal Treatment Act. Of these requests for advice, 27% concerned discrimination on the basis of disability, while discrimination on the grounds of ethnicity/race, gender and age, each comprised 23% of the queries (Direct Request (CEACR) – adopted 2013, published 103rd ILC session (2014), Discrimination (Employment and Occupation) Convention (1958) – (No. 111), Germany). The Committee asks the next report to provide information on the FADA's activities, including statistical data on individual queries and cases.

The Committee asks information in the next report on cases of discrimination in employment handled by the courts and other competent bodies, with specific indications regarding their nature and outcome, and compensation paid to the employees. It also asks that the next report provide information on positive measures/actions for combating all forms of discrimination in employment.

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

### **Work of prisoners**

The Committee referred in its previous conclusion (Conclusion XX-1/2012) to its Statement of Interpretation on Article 1§2 asking for relevant information on this subject. In the absence of such information, the Committee reiterates its request that the next report include relevant information on the points raised in its Statement of Interpretation on Article 1§2 according to which "Prisoners' working conditions must be properly regulated, particularly if they are working, directly or indirectly, for employers other than the prison service. In accordance with the principle of non-discrimination enshrined in the Committee's case law, this supervision, which may be carried out by means of laws, regulations or agreements (particularly where companies act as subcontractors in prison workshops), must concern pay, hours and other working conditions and social protection (in the sphere of employment injury, unemployment, health care and old age pensions)". The Committee points out that if the information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 1§2 of the 1961 Charter regarding prohibition of forced labour in respect of work of prisoners.

### **Domestic work**

The Committee notes from the report that the regulations governing the remuneration of persons employed in family businesses are the same as those applied in other business enterprises (the Minimum Wage Act (*MiLoG*), the Posted Workers Act (*AEntG*) and the Provision of Labour (Temporary Staff) Act (*AÜG*)). Further protection is offered by the Federal Labour Court's judgment 5 AZR 436/08 of 22 April 2009 on the level of remuneration which can be considered unethical.

With regard to domestic labour, the report stipulates that in Germany domestic employees are subject to the same labour-law conditions as all other employees. Working time is eight

hours per day. Daily working hours can be extended to a maximum of ten hours provided that the working time extension does not lead to an average of more than eight hours over a six month period. If an employee is asked to work on a Sunday or a holiday, a day off in lieu must be granted within a two-week period. Adherence to the Working Hours Act is monitored by the Länder regulatory authorities, which are responsible for inspecting work premises during normal working hours. Outside of this time or if the place of work is a private place of residence, inspections may only be carried out for the purpose of preventing an imminent threat to public safety and order, with the employer's permission. The working conditions of domestic employees are protected in particular by Sections 617 and 618, paragraph 2 of the *BGB* (German Civil Code).

The report states that domestic workers are entitled to the same criminal law protection as all other workers. Depending on individual circumstances affected parties can therefore be entitled to claim for compensation because contractual obligations have been violated, they have been bodily harmed, their health has suffered or personal rights have been infringed.

In reply to the Committee's question concerning the rights of migrant domestic workers (General question on the existence of forced labour in the family context, Conclusions XX-1/2012), the report indicates that EU nationals entitled to freedom of movement have the right to change their employer at any time. On the other hand the residence permit of a third-country national can be curtailed if his/her specific job no longer exists (Article 7, Paragraph 2 of the Residence Act). The decision to do so lies with the Foreigners Registration Office, which can take instances of abuse by an employer and the existence of a new job into consideration on a case-by-case basis. Moreover, Article 15c of the Employment Ordinance (*BeschV*) stipulates that authorisation of foreign domestic staff requires a placement agreement between the Federal Employment Agency and the employment service of the country of origin. To date, no agreements on the placement of domestic staff have been signed. Article 13 of this same ordinance authorises domestic work assignments to temporary postings and diplomats; in 2014, 29 authorisations were granted.

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

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

The Committee noted the information concerning the period of service in the armed forces provided in respect of its previous conclusion (Conclusions XX-1/2012). The Committee refers to this conclusion and asks that the next report provide information on the impact of studies or training courses followed by soldiers on the duration of their service in the armed forces and on the possible financial repercussions of early termination of service.

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

The Committee notes that the report does not answer the questions concerning the requirement to accept the offer of a job or training raised in its Statement of Interpretation on Article 1§2 in the general introduction (Conclusions XX-1/2012). Consequently, the Committee reiterates its request that the next report include relevant information concerning the points raised in this Statement of Interpretation, in particular on the right of the persons concerned to appeal against the decision to suspend or withdraw their unemployment benefits. The Committee points out that if the information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 1§2 of the 1961 Charter regarding the obligation to accept a job offer or training or lose unemployment benefits.

#### ***Privacy and work***

The Committee takes note of the information provided on overtime. It considers that the right to undertake work freely includes the right to be protected against interferences with the right



to privacy (Statement of Interpretation on Article 1§2, Conclusions XX-1/2012). It asks that the next report provide updated information on the measures taken by Germany to ensure that interference in workers' privacy is forbidden and, if necessary, sanctioned.

*Conclusion*

The Committee concludes that the situation in Germany is in conformity with Article 1§2 of the 1961 Charter.

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

### *Paragraph 3 - Free placement services*

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

The report indicates that the statements made in the 29th report concerning free employment services remain valid.

As noted in the report, the labour market instruments under Book III of the Social Code on Employment Promotion were reformed in 2011 with the Act to Improve the Chances of Integration in the Labour Market (*Gesetz zur Verbesserung der Eingliederungschancen am Arbeitsmarkt*) in order to ensure that the employment offices and job centres place job-seekers in a way that perfectly matches their profiles.

The report recalls that the Federal Employment Agency (*Bundesagentur für Arbeit, BA*) has the task of ensuring a rapid and lasting balance between supply and demand on the labour market. BA is assisted by 10 regional directorates, 156 employment agencies and approximately 600 branch offices. From another source, (ILO Notes, PES in Europe ([http://www.ilo.org/public/libdoc/ilo/2015/115B09\\_226\\_engl.pdf](http://www.ilo.org/public/libdoc/ilo/2015/115B09_226_engl.pdf))) the Committee notes that the staff of the public employment services (PES) consisted of about 108,000 fulltime staff members in December 2013, a slight increase from 100,362 in 2011. Of these, about 56,000 employees worked in the job centres. The Committee asks the next report to provide the number of employment services staff in relation to the number of jobseekers.

As regards the placement rate, the report indicates that it was equal to 15,7% in 2011; 15,2% in 2012; 12,7% in 2013; 12,6% in 2014. The report reiterates nevertheless that these figures do not represent the total degree of participation of employment agencies in placement, given that other services they provide (self-service information centres, advisory services, the job exchange information platform, etc.) also contribute to this end. However, the Committee asks the next report for information on: a) number of jobseekers and unemployed persons registered with public employment services (PES); b) number of vacancies notified to PES; c) number of persons placed via PES; d) placement rate (i.e. percentage of placements compared to the number of notified vacancies); e) average time taken to fill a vacancy.

As regards private employment agencies, the Committee already noted in its previous conclusions that since the deregulation in 2002, such agencies only need to obtain a trading license. The report mentions that on the basis of the Act to Improve the Chances of Integration in the Labour Market, all providers of employment must be certified. Since 2012 providers of employment promotion are certified on the basis of Book III of the Social Code and the Accreditation and Certification Ordinance and operate on an equal footing with other providers of active employment promotion. Despite the cooperation between public employment services and private agencies on placements, the report indicates that the market share of public employment services as a percentage of the total number of persons recruited on the labour market cannot be provided because no data is collected on appointments in the labour market. In this respect, the Committee reiterates its request concerning the percentage of the market share of the public employment services that is placements made by the public employment services as a percentage of the total number of persons recruited on the labour market.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 1§3 of the 1961 Charter.

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

### *Paragraph 4 - Vocational guidance, training and rehabilitation*

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

As Germany has accepted Article 9, 10§3 and 15§1 of the 1961 Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to vocational guidance and training for persons with disabilities are examined under these provisions.

The Committee considered the situation to be in conformity with the 1961 Charter as regards measures relating to vocational training and retraining of workers (Article 10§3) and training for persons with disabilities (Article 15§1).

It deferred however its conclusion as regards measures concerning vocational guidance (Article 9). For the same reasons, the Committee defers its conclusion on Article 1§4.

### *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 contained in the report submitted by Germany.

The report confirms, as the Committee previously noted (Conclusions XVI-2 (2004)), that access to vocational guidance in Germany is free and open to all residents.

According to the report, information on vocational guidance is available not only through the Federal Employment Agency professionals but also online, through a user-friendly internet site which is designed to be accessible also to persons with disabilities. As regards vocational guidance for these persons, whether in the education system or the labour market, the Committee refers to its assessment under Article 15 of the Charter.

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

The report states that the situation, which the Committee previously found to be in conformity with the Charter, has not changed. It indicates that during the reference period the Federal Employment Agency continued to strengthen the advisory competence of its placement and advisory staff and to broaden its offer of services, notably by developing an advisory plan and expanding its methodological repertoire. In particular, a mandatory basic qualification process has been established for all new advisory and placement staff, to ensure that staff turnover does not lead to a deterioration in the quality of advisory services.

According to the Euroguidance website, in the educational sector, career guidance (*Bildungsberatung*) is provided through:

- School Guidance and counselling provided in the penultimate year at all forms of school;
- Guidance on educational paths;
- School Psychological Service;
- Vocational and Career Guidance by the Federal Employment Agencies (FEA);
- Higher Education (HE) counselling services.

The Committee notes from the report that, in the framework of the "Graduation and Continuation – Education Chains Up to Vocational Training Qualification" initiative launched in 2010 by the Federal Government in coordination with the *Länder* governments, certain guidance measures have been adopted to prevent individuals from dropping out of school, avoid "holding patterns" in the transition system, and ensure a supply of young skilled workers through vocational training. This programme has involved approximately 1,000 secondary general schools and special needs schools, some 30,000 pupils, around 700 career entry mentors and approximately 1,000 senior experts (practitioners with professional experience). Around 1,000 other schools and 1,200 career entry mentors are also funded by the Federal Employment Agency pursuant to Section 421 s of Book III of the German Social Code (a federal budget of €481 million was allocated up to 2014 for this initiative). Other forms of practical vocational guidance, funded by the Federal Government through the Vocational Orientation Programme ("BOP"), are provided at workshop days.

The Committee asks the next report to provide updated information on the functions, organisation and operation of public and private services providing vocational guidance in education.

According to the report, the expenditure in the field of career guidance (based on average personnel costs and lump sum material costs of a workplace including IT share) went from 303 million € in 2011 to 340 million € in 2014, including specialised advisors for persons with disabilities and rehabilitation. The number of advisors (full-time equivalents) went from 3845 in 2011 to 3829 in 2014, including advisors for degree-level occupations (from 834 in 2011 to 859 in 2014), specialised advisors for persons with disabilities and rehabilitation (from 868 in 2011 to 854 in 2014) and career-guidance advisors for the young people, below 25 years (from 2143 in 2011 to 2116 in 2014). It is not clear whether these figures cover only vocational guidance in the education system or also in the labour market. The Committee

asks the next report to specify on the one hand the data concerning career guidance provided in the education system (with the number of pupils/students concerned) and, on the other hand the data concerning vocational guidance in the labour market. It recalls that up-to-date information needs to be systematically provided in all future reports, especially figures on the resources, staff and number of beneficiaries of vocational guidance in the education system. It reserves in the meantime its position on this issue.

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

In accordance with Sections 29 et seqq. of Book III of the Social Code, vocational guidance in the labour market is provided by the employment agencies free of charge to all persons seeking advice. The report recalls the statutory advisory tasks of the Federal Employment Agency and addressed respectively at employers and employees. The Committee understands from the report that the measures, aimed at strenghtening the advisory competence of the Federal Employment Agency, and referred to with regard to vocational guidance in the education system, also concern vocational guidance in the labour market.

The report also refers to specific measures taken to improve guidance of unemployed people, in particular the setting up since 2009 of a "Four Phase Pilot" (4PM) integration scheme and its Advisory Plan (BeKo). In addition, the setting of "Networks for activation, advice and opportunities" is planned for 2016 (out of the reference period). As regards the advisory services addressed at employers, the report refers to the introduction in July 2013 of the qualification counselling in all employment offices nationwide. This service is primarily aimed at promoting systematic, strategic forward-looking personnel planning and development for small and medium-sized enterprises (SMEs).

In its previous conclusion, the Committee asked for up-to-date information on total staff numbers and the total number of beneficiaries of vocational guidance in the labour market. It is not clear whether the figures indicated in the report in relation to vocational guidance in the education system also cover vocational guidance in the labour market. The Committee recalls that Article 9 imposes on States Parties to set up and operate a service that helps all persons, free of charge, to solve their problems relating to vocational guidance. The right to vocational guidance must be guaranteed both within the school system (information on training and access to training) and within the labour market (information on vocational training and retraining, career planning, etc.). Vocational guidance must be provided:

- free of charge;
- by qualified (counsellors, psychologist and teachers) and sufficient staff;
- to a significant number of persons and by aiming at reaching as many people as possible;
- and with an adequate budget.

In the absence of information on these points, the Committee cannot assess the effectiveness of vocational guidance services in Germany. It accordingly reiterates its request for information and reserves in the meantime its position.

### ***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 ; access to higher technical and university education*

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

#### ***Secondary and higher education***

The Committee notes from the report that vocational training is dominated by the dual vocational training system which combines in-company training and school-based training. More than 520,000 new training contracts are concluded every year. On average, approximately 67% of all individuals who completed their training in 2013 were hired by the company that provided the training. This means that two out of three trainees make a seamless transition into employment. In those cases where a seamless transition is not possible, the conditions are at least favourable for making the transition to working life after a period of job hunting when the individual has a vocational qualification.

The Committee observes that the Federal Government is planning to provide Assisted Vocational Training and more training-related assistance in future to support on a broader basis young people undergoing in-company vocational training provided through the dual vocational training system. Enterprises can also receive assistance through Assisted Vocational Training. In 2015, the private sector wants to offer 20,000 more training places than in 2014, plus 500,000 internship positions every year for vocational orientation purposes.

According to the report, all partners in the "alliance" additionally want to take part in a joint campaign that they will use to promote vocational training nationwide.

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The Committee takes note of the innovation in vocational education and training (VET) introduced by the Government – the Jobstarter programme for structural development. The Federal Government allocated €125 million in funding for the programme until 2013. Jobstarter provides funding for projects which help to create additional in-company training places in the individual regions and recruit suitable trainees. Improved collaboration between local stakeholders strengthens regional responsibility for vocational education and training and, at the same time, contributes to structural development.

The Committee wishes to be kept informed of the implementation of these vocational training programmes, in terms of the number of participants, total funding and the percentage of participants who found a job afterwards.

#### ***Measures to facilitate access to education and their effectiveness***

The Committee notes from Euridyce (Funding for Education, Germany, 2014) that the financing of education from the public funds is currently based on the following arrangements:

- most educational institutions are maintained by public authorities.
- they receive the greater part of their funds from public budgets.
- certain groups undergoing training receive financial assistance from the state to provide them with the money they need to live and study.

- the public financing arrangements for the education system are the result of decision-making processes in the political and administrative system in which the various forms of public spending on education are apportioned between Federation, Länder and *Kommunen* (local authorities) and according to education policy and objective requirements.

As regards public spending on education, the Committee further notes from Euridyce that the expenditure (basic funds) of the Federation, Länder and local authorities are shown in the demarcation of the financing statistics of the public budgets. In 2011, according to the financing statistics, the public sector expended a total of € 110 billion on out-of-school youth education and day-care centres for children, general and vocational schools, higher education institutions, financial assistance for pupils and students, and other educational expenditure. This corresponds to 4.2% of GDP and 19.7% of the total public budget.

Moreover, the additional German expenditure related to education, in-company continuing education, accounted for €10.2 billion. Expenditure on further education amounted to € 10.5 billion (the private sector contributed € 2.1 billion) and the promotion of participants in continuing education stood at € 0.8 billion.

#### *Conclusion*

The Committee concludes that the situation in Germany is in conformity with Article 10§1 of the 1961 Charter.

## **Article 10 - Right to vocational training**

### *Paragraph 2 - Apprenticeship*

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

According to the report, vocational training grants are a means-based cost-of-living allowance for trainees who are undergoing in-company training. There is a legal right to the vocational training grant. This benefit is funded pursuant to employment promotion law from unemployment insurance contributions. The Committee notes that 110,144 young persons below 25 years of age received the vocational training grant in 2014.

In coordination with the *Länder* Governments, the Federal Government launched the Graduation and Continuation – Education Chains Up to Vocational Training Qualification initiative. In the process, it is following the innovative approach of coordinating the services and options offered by the various federal and *Länder* departments and agencies. This initiative was designed to prevent individuals from dropping out of school and ensure a supply of young skilled workers through vocational training. Approximately € 484 million was allocated up to 2014 for the education chains initiative.

According to the report approximately 113,000 young people at nearly 3,000 schools offering lower secondary school certificates or special needs school certificates can be assisted through the provision of career entry support for up to nearly four years.

### *Conclusion*

The Committee concludes that the situation in Germany is in conformity with Article 10§2 of the 1961 Charter.



## **Article 10 - Right to vocational training**

### *Paragraph 3 - Vocational training and retraining of adult workers*

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

#### ***Employed persons***

According to the report the the Federal Government is engaged in a wide range of activities aimed at ensuring an adequate supply of skilled labour by, among other things, providing initial and further training for more individuals.

Promotion of further training pursuant to Book III of the Social Code is a key element in active labour market policies and makes an important contribution to ensuring an adequate supply of skilled workers and to maintaining or improving the individual's employability. The provisions governing the promotion of further training also apply to the basic benefits for job seekers due to the reference contained in Book II of the Social Code. This assistance also includes the possibility of further training that leads to a vocational qualification (retraining). Workers can receive assistance when further training is necessary in order to integrate them into a job in the event that they are unemployed or in order to avoid the threat of unemployment or because they do not have vocational qualification.

When the prerequisites for assistance are met, workers receive an education voucher from the relevant employment agency or Jobcenter. This voucher lists the training goal, the period of time required to achieve the goal, and the geographical area in which the voucher is valid. The holder can, under the conditions laid down in the training voucher, redeem the training voucher at a licensed (certified) provider of his or her choice. This provider must be licensed for providing further training promotion schemes. The actual training programme must also be accredited for the further training promotion.

Since the provision of further training for employed workers is primarily the responsibility of the respective employer and employee, assistance for further training is limited to support for specific groups of persons.

The Act to Improve the Chances of Integration in the Labour Market which came into force on 1 April 2012 removed the time limit in the regulations governing the employment agencies' provision of further training assistance for older employed workers (45 years of age or older in SMEs with fewer than 250 employees) and made these rules more flexible with regard to the amount/scope of the assistance.

The report further states that in addition, a possibility for providing assistance for workers who are under the age of 45 and are employed by an SME was established. As a requirement for this assistance, the employer must bear at least 50% of the training programme costs. This arrangement expires at the end of 2019.

Employers who release from work low-skilled workers while continuing to pay their wages so that these employees can acquire vocational qualification can receive grants from the Federal Employment Agency for the wages that apply to the time spent receiving training. The Federal Employment Agency has continued its special Continuing Vocational Education and Training for Low-Skilled Workers and Older Employees in Companies programme on the basis of the expanded legal provisions. The Committee notes that during the reference period approximately 60,400 cases were financed through this programme in connection with assistance measures for further vocational training. A total of €250 million was allocated for this in 2011 and subsequently €280 million a year for the years 2012 to 2014.

#### ***Unemployed persons***

The Committee refers to its conclusion in Article 1§1 where it noted that the unemployment rate decreased further by 0.8% to 5.0% in 2014 which is way below the EU 28 average rate of 10.2%. The Committee asks the next report to provide up-to-date information for the

reference period on continuing training measures for unemployed persons as well as their activation rate.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 10§3 of the 1961 Charter.

## **Article 15 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement**

### *Paragraph 1 - Education and training for persons with disabilities*

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

According to the report, in December 2013, there were 9.6 million people with disabilities in Germany, of which 7 548 965 had severe disabilities. According to the 2012 figures from the Academic Network of European Disability Experts (ANED), the proportion of people with disabilities (aged 30-34) having completed tertiary level education was 19.3%, compared with 36.5% for non-disabled people. The proportion of young people with disabilities (aged 18-24) leaving school early was 19%, compared with 7.5% for non-disabled people.

Germany ratified the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol on 24 February 2009.

### **Definition of disability**

The Committee refers to its previous conclusion (Conclusions XX-1 (2012)), in which it noted that Article 2 subs. 1 of Book IX of the Social Code defines disability. The report states that the finding that a person has a severe disability is made by the pension office or by the authorities which are competent in accordance with *Land* law.

### **Anti-discrimination legislation**

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

### **Education**

According to the report, the granting of integration assistance in early childhood education depends on the degree of disability and potential restrictions on participation. There were 493,200 schoolchildren receiving special needs support in Germany. The proportion of schoolchildren receiving support had risen from 5.3% to 6.6%. The number of children with learning difficulties stood at 197,000 (i.e. 40% of all schoolchildren with special educational needs), while there were 79,000 schoolchildren with special needs relating to their intellectual development, i.e. 16% of the total number of schoolchildren with special educational needs. The report states that the number of children with learning difficulties receiving support was around 61,000 lower in 2012-2013 than in 2000-2001, whereas the number of schoolchildren receiving support for other types of need had increased. The Committee notes that, according to the report, the number of schoolchildren with special educational needs starting school who are participating in integrative education has risen (from 19% in 2006 to 34% in 2012) whereas the number of children starting school directly at special needs schools declined by 4,500 between 2006 and 2012 (to 23,000).

The report states that education policy is the responsibility of the education ministries of the *Länder*, so they are not under the control of the Federal Government in this area, and mentions a number of initiatives adopted during the reference period:

- The recommendation on “Inclusive Education of Children and Young People with Disabilities in Schools” of 20 October 2011 adopted a new outlook in favour of inclusive education, the aim being to identify and overcome barriers and to ensure equal access to education for all. The inclusive education system covers all types of schools.
- In its decision of 6 December 2012, the Standing Conference of the Ministers of Education and Cultural Affairs of the *Länder* adopted the framework agreements on training and examination of teachers in order to reflect the requirements of inclusive education.

- In addition, the national conference “Shaping inclusion – together, competently, professionally” was held on 17 and 18 June 2013.
- The national programme to improve the quality of teacher training with regard to the requirements of inclusion received €500 million in funding from the Federal Government over a ten-year period which began in 2014.
- The *Länder* regularly provide information about the progress made in implementing inclusive education in the bodies of the Standing Conference of the Ministers of Education and Cultural Affairs of the *Länder* and via an annually updated overview.

In response to the Committee, the report states that young people with disabilities have access to education except for pupils who are temporarily unable to attend school due to illness. The Committee notes from the report that it is not yet possible to offer all children all types of schooling in mainstream schools. The report indicates, however, that there has been a significant increase in the proportion of schoolchildren with disabilities who attend mainstream schools. Parents whose request for inclusive school education has been denied can appeal to the Administrative Court. The report explains that neither the courts nor the authorities in the *Länder* responsible for supervising schools collect data concerning the number of such requests.

As for the other questions raised by the Committee in its previous conclusion (Conclusions XX-1 (2012)), it appears that the education of schoolchildren with special needs is subject to the general regulations on school supervision and quality assurance in the *Länder*, which apply to all schools. In addition, 2013 saw the introduction of a right to a place in day care for all children from the age of one. In 2013, 2 752 612 children between the ages of one and seven years were receiving integration assistance in child day care centres.

Under §§ 29 ff of Book III of the Social Code (SGB III), career guidance is also available to people with disabilities free of charge. The report states that in addition to a website where information is available in easy language and in sign language, texts on career choice are also offered in easy-to-understand language. The 850 or so Federal Employment Agency professionals assist notably people with disabilities during their schooling, training and occupational integration.

### ***Vocational training***

In its previous conclusion (Conclusion XX-1 (2012)), the Committee asked for information and figures showing how many people with disabilities benefit from training in the mainstream environment and how many in special schools and centres. As the report does not address this issue, the Committee repeats its request.

The report states that great importance is attached to vocational training for people with disabilities and describes a number of initiatives taken by the Federal Government in this area:

- The “Jobs without Barriers” initiative (*Jobs ohne Barrieren*), which ran from 2004 to 2006 (outside the reference period), aimed to improve the situation faced by people with disabilities (including severe disabilities) in working life. The initiative also focused on training young people with disabilities by encouraging companies to perform this task. The report points out that numerous training places and jobs have been created for people with disabilities.
- The “Job4000” initiative, which ran from 2007 to 2013, had three objectives, namely employment, training and support. With regard to vocational training, the report indicates that employers who create an additional training place for a severely disabled young person receive a payment of up to €3 000 from the integration office. After the young person in question has completed the training and been taken on in a position with compulsory social insurance coverage, the

employer receives a further payment of €5 000. The *Länder* are responsible for implementing this scheme.

As regards specialised training centres for young people, the report states that there are 52 specialised training centres nationwide, offering some 13,000 training places for approximately 230 different occupations. In addition, there are a number of places in pre-vocational training programmes. The centres also support young people undergoing rehabilitation in their transition to employment. The report states that no detailed information is available concerning the total number and the qualifications of the staff in the centres. With regard to vocational training centres – social services seeking to integrate adults with disabilities into the labour market – the nationwide network of 28 centres with roughly 15,000 places offers more than 180 courses leading to a recognised qualification. The report states that no detailed information is available concerning the total number and the qualifications of the staff in the vocational training centres.

The Committee notes that the 701 recognised workshops offer initial-stage and vocational training for people with disabilities who cannot be employed in the open labour market. It appears from the report that in 2012 these workshops employed 302 629 people, of whom 14 543 were entering the initial procedure or the vocational training stage, and 305 466 in 2013, of whom 13 780 were entering the initial procedure or the vocational training stage. The report explains what qualifications are needed to become a member of the workshop staff and states that the ratio of staff to people with disabilities should be 1:6 at the initial procedure and vocational training stage and 1:12 at the work stage.

#### *Conclusion*

The Committee concludes that the situation in Germany is in conformity with Article 15§1 of the 1961 Charter.

## **Article 15 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement**

### *Paragraph 2 - Employment of persons with disabilities*

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

### ***Employment of persons with disabilities***

According to the report, there were approximately 9.6 million people with disabilities in Germany, of which, in December 2013, 3 329 474 were working-age persons (between 15 and 65 years) with severe disabilities.

In its previous conclusion (Conclusions XX-I (2012)), the Committee asked for information about the situation of the other working-age persons with disabilities, in particular how many persons were employed in the open labour market. In response, the report states that it is only possible to provide information about the number of persons with severe disabilities who work for employers subject to mandatory employment (i.e. those with 20 or more positions). The Committee notes that this figure increased over the reference period from 932 156 in 2011 to 964 650 in 2012 and 986 724 in 2013. The number of persons in employment in workshops for persons with disabilities also rose from 297 214 in 2011 to 305 466 in 2013.

According to the 2012 report by the Academic Network of European Disability Experts (ANED), 69% of persons with moderate disabilities are employed, but only 45% of persons with a degree of disability between 50 to 80, and only 26% with a degree of 90 to 100. The unemployment rate among women with disabilities was 18.6% as against 4.3% for non-disabled women, while the unemployment rate among men with disabilities was 19.4% as compared with 5.1% for non-disabled men.

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

In its previous conclusion (Conclusions XX-I (2012)), the Committee asked for information about the right of people with disabilities, whatever the type and degree of their disability, to reasonable accommodation; and whether the reasonable accommodation obligation applies to all persons with disabilities, regardless of the nature and origin of their disability. In the absence of a reply, the Committee repeats its request.

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

The report states that the participation of persons with severe disabilities in the life of the community and in working life is the goal of the Federal Government's policy. The report describes measures designed to improve the occupational integration of people with severe disabilities:

- The mandatory employment and compensatory levy scheme: Employers with at least 20 positions are required to employ persons with severe disabilities in at least 5% of these positions. If this target is achieved only partially or not at all, the employer must pay the integration services a monthly compensatory levy, based on the degree of compliance with the obligations.  
The Committee notes that the number of mandatory jobs which were filled by persons with disabilities has increased. In 2011, for example, it was 964 457 (real rate 4.6%) as compared with 1 016 065 (real rate 4.7%) in 2013.
- Integration and training subsidies: the report states that these subsidies can be used to fund in-house training or further training for people with severe disabilities. As a rule, such subsidies are capped at 70% of the wages of workers with severe disabilities and are payable for up to 24 months (or longer in the case of older people). In 2012, there were 68 283 cases (€510.4 million) compared with 56 939 (€441.5 million) in 2013.

- Benefits provided by the integration offices in the form of assistance with working life:
  - Adaptation of workplaces and training places for people with disabilities. In 2011, there were 9 379 cases (€28.57 million) and 9 963 in 2012 (€30.13 million).
  - Subsidies in the case of exceptional expenses (wage cost subsidies as compensation for reduced performance). In 2011, there were 29 344 cases (€97.51 million) and €31 707 in 2012 (€105.62 million).
  - Work assistance (e.g. personal assistance for persons with severe physical disabilities, reading assistants for people who are blind or have a severe visual impairment, or sign-language interpreters for deaf people, etc.). In 2011, there were 2 425 cases (€17.47 million) and 2 474 in 2012 (€19.29 million).

The report further indicates that persons with a severe disability enjoy various forms of special protection and support in working life:

- They enjoy special protection against dismissal. They may only be subject to ordinary or summary dismissal if the integration office has given its prior approval.
- They are entitled to five days' additional paid leave in each leave year.
- Depending on the degree of the disability and whether certain health-related criteria are met, tax concessions (e.g. flat-rate deductions), exemption from road tax or free use of public transport may be requested.

In addition, the report describes two projects: the "Jobs without Barriers" initiative (*Jobs ohne Barrieren*), which ran from 2004 to 2006 (outside the reference period) and aimed to improve the situation faced by disabled and severely disabled people in working life, and the "Job4000" initiative, which ran from 2007 to 2013 and had three objectives – employment, training and support. With regard to employment, the report states that employers who hire a severely disabled person can receive financial support from the integration office. The scheme is intended for severely disabled persons without a vocational qualification or with an intellectual or mental disability. It is intended to create a minimum of 1,000 new jobs. The *Länder* are responsible for implementing the scheme.

The Committee requested information about the impact of the "workplace integration management" obligation, described in its previous conclusion (Conclusions XIX-1 (2008)). The report states that employers' obligation to engage in workplace integration management has, due to the decisions of the labour courts, developed into a form of protection against dismissal for employees suffering from illness. In addition, the Federal Government has commissioned a study to examine the uptake and implementation of workplace integration management. It appears that there is still a significant need for optimisation in relation to the way in which workplace integration management is carried out.

#### *Conclusion*

The Committee concludes that the situation in Germany is in conformity with Article 15§2 of the 1961 Charter.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 1 - Applying existing regulations in a spirit of liberality*

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

It notes that all EEA citizens, as well as their family members, have free access to the labour market. During the reference period, a work permit was required for the nationals of the following states parties to the Social Charter: Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria (until 1 January 2014), Croatia, Czech Republic (until 30 April 2011), Estonia (until 30 April 2011), Georgia, Hungary (until 30 April 2011), Latvia (until 30 April 2011), Lithuania (until 30 April 2011) Republic of Moldova, Montenegro, Poland (until 30 April 2011), Romania (until 1 January 2014), Russian Federation, Serbia, Slovak Republic (until 30 April 2011), Slovenia (until 30 April 2011), "The former Yugoslav Republic of Macedonia", Turkey and Ukraine.

### **Work permits**

In accordance with the Residence Act 2008, as amended in 2013, foreigners require a residence permit for entry and residence. A residence title shall entitle the holder to pursue an economic activity insofar as this is laid down in the Act or the residence title expressly permits pursuit of an economic activity. Every residence title must indicate whether the pursuit of an economic activity is permitted. A foreigner who is not in possession of a residence permit for the purpose of employment can only be permitted to take up employment if the Federal Employment Agency has granted its approval or a statutory instrument stipulates that taking up the employment concerned is permissible without the approval of the Federal Employment Agency. Any restrictions imposed by the Federal Employment Agency in granting approval are to be specified in the residence title.

According to the report, the Residence Act provides for five types of residence permits. The general residence titles, the EU Blue Cards and the visas are granted for a limited time, while this is not the case for settlement permits and permits for permanent residence – EU. These two last types of permit are very similar, the difference being that the permit for permanent residence – EU also includes the right to resettle in another EU Member State.

### **Relevant statistics**

The report indicates that, as of 31 August 2014, 7,401,000 inhabitants of Germany were foreign nationals and represented 9.1% of the population. According to the OECD report 2015 on recent changes in migration movements and policies, the Central Foreigners Registry recorded 1.15 million foreigners migrating to Germany in 2014. Based on the same source, the number of foreign population in Germany (8.2 million at the end of 2014) was at the highest level ever recorded and had increased by 7% compared to 2013. The largest group of foreign citizens were from Turkey (1.5 million), Poland (670 000), Italy (570 000), Romania (360 000) and Greece (330 000). The number of foreign workers also increased, following the accession of new EU countries. In particular, at the end of 2014, there were 21 000 holders of an EU Blue Card, including 10 000 working in shortage occupations.

The Committee previously deferred its conclusion (Conclusions XX-1 (2012)), pending receipt of information on the number of permits for the purpose of employment requested, granted and refused and on the main reasons for the refusal to grant a residence permit. On this point, the report indicates that the number of residence permits issued for employment was 65 996 in 2011, 62 714 in 2012, 62 974 in 2013 and 65 978 in 2014, while the number of residence permits issued for self-employment was 3 831 in 2011, 3 988 in 2012, 4 430 in 2013 and 4 773 in 2014. The report states that, as a result of the subsidiary administrative structure of the country, the responsibility for implementing the legislation on aliens is mainly decentralised in the 16 Länder. The granting of residence permits takes place at the municipal level, also decentralised, at around 620 local competent immigration authorities.



Applications for and refusal of residence permits are, however, not recorded for statistical purposes at the municipal level, at the Länder level or the national level.

The Committee notes that, during the reference period, the number of immigrants and foreign workers continued to increase. It points out however that, in the absence of data on the number of permits (first permits and renewals) granted or refused, against the number of applications, concerning specifically nationals of non-EEA States Parties to the Charter, and the grounds for refusals of applications, it is not in a position to establish that the situation is in conformity with Article 18§1 of the 1961 Charter. It accordingly finds that the situation is not in conformity with this provision and reiterates its request for information.

#### *Conclusion*

The Committee concludes that the situation in Germany is not in conformity with Article 18§1 of the 1961 Charter on the ground that it has not been established that the existing regulations are applied in a spirit of liberality.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 2 - Simplifying existing formalities and reducing dues and taxes*

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

### ***Administrative formalities and time frames for obtaining the documents needed for engaging in a professional occupation***

The Committee previously noted the introduction, in 2005, of a single residence and work permit (Conclusions XIX-1 (2008) and XX-1 (2012)).

According to the report, the Residence Act 2008 (as amended in 2013) currently provides for three types of short-term permits (general residence title, EU Blue Card, visa) and two permanent permits (settlement permit, permit for permanent residence – EU). In order to get a permit, the person must prove to have a valid passport, health insurance, sufficient financial resources and accommodation. The Committee asks what is the maximum validity of a temporary permit, what are the formalities for renewing a permit or changing the type of permit and under what conditions a foreigner can apply for a permanent permit (settlement or permanent residence-EU).

The Committee also asks whether nationals of non-EEA states parties to the Charter can apply for an authorisation to work once already in Germany or only from abroad. The Committee recalls in this respect that conformity with Article 18§2 presupposes the possibility of completing formalities for the obtention of residence and work permits in the country of destination as well as in the country of origin. It also implies that the documents required (residence/work permits) will be delivered within a reasonable time. In this respect, the Committee notes from the report that no statistical data is available on the timeframe for obtaining a permit. It asks nevertheless the next report to indicate the estimated average timeframe (for non-EEA nationals).

### ***Chancery dues and other charges***

The report indicates that the administrative fees for the permits delivered under the Residence Act, as well as the applicable exemptions or reductions, are set in conformity with the Ordinance governing Residence, as approved by the Bundesrat. In its previous conclusion (Conclusions XX-1 (2012)), the Committee noted that the cost for a residence permit of the validity of one year was 50 €, and 60 € with a validity of more than one year, while the fees for issuing a settlement permit were between 85 € and 200 €. The current individual rates set down in the Ordinance (§§44 et seqq.) are: €100 euros for issuing a residence permit or an EU Blue Card valid for a period of up to one year, €110 for a permit valid longer than one year, €135 for permanent residence – EU and €135 to €250 for a settlement permit.

The Committee recalls that under Article 18§2 of the Charter, the States Parties undertake to reduce or abolish chancery dues and other charges payable by foreign workers or their employers. It notes that in Germany, during the reference period, the charges increased, which is not in conformity with the spirit of Article 18§2 of the Charter. It considers, however, that increases in chancery dues or other charges can be considered to be in conformity with Article 18§2 of the Charter as long as they are made for a good reason (for example in order to cover increased processing costs or inflation) and they are not excessive. The Committee asks for updated information in the next report on the regulatory criteria applied when the amount of the charges is set, clarifying, for instance, whether the charges correspond to the actual cost of processing the residence permit application and whether it is planned to introduce measures to reduce costs for workers or employers.

*Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Germany is in conformity with Article 18§2 of the 1961 Charter.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 3 - Liberalising regulations*

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

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

According to the report, the Residence Act 2008 (as amended in 2013) currently provides for three types of short-term permits (general residence title, EU Blue Card, visa) and two permanent permits (settlement permit, permit for permanent residence – EU). The holder of a residence title can engage in the pursuit of an economic activity if this is explicitly allowed by the residence title granted. A foreigner who is not in possession of a residence permit for the purpose of employment can only be permitted to take up employment if the Federal Employment Agency has granted its approval or a statutory instrument stipulates that taking up the employment concerned is permissible without the approval of the Federal Employment Agency. Any restrictions imposed by the Federal Employment Agency in granting approval are to be specified in the residence title.

The Committee asks the next report to clarify what are the conditions that a national of a non-EEA state party to the Charter must satisfy to be allowed to work in Germany, either in employment or in self-employment, depending on his/her residence title. In particular, it reiterates its question as to whether and to what extent the employment of a non-EEA national of a state party to the Charter is subject to a national labour market test, based on priority rules in favour of EEA workers. With reference to its previous conclusion (Conclusions XX-1 (2012)), the Committee also requests updated information on the conditions for gaining unrestricted access to the German labour market, and on the conditions for renewing a permit or for changing the type of permit (for example, in case of changement from employment to self-employment or the other way round). It furthermore reiterates its request for information on the measures governing the recognition of foreign certificates, professional qualifications and diplomas.

In view of the lack of reply in the report to the questions previously raised and the number of outstanding aspects to be clarified, the Committee does not consider that it has been established that the existing regulations have been liberalised.

### ***Consequences of loss of employment***

The Committee refers to its previous conclusion (Conclusions XX-1 (2012)) where it noted on the one hand that the competent authorities can curtail a foreigner's residence permit if his/her employment relationship is prematurely terminated and, on the other hand, that the authorities' discretionary powers in this field are limited – they must notably examine all relevant circumstances of the case – and the decision is subject to judicial review. In particular, the Committee noted that the decision depended on whether the person could secure its livelihood, for the period necessary to find a new job. The Committee asked whether the legal practice of retroactively limiting a residence permit applied only in cases of potential abuse by the foreign worker, or also in all cases where the worker, after losing his/her job, might not secure his/her livelihood in another way. As the report does not provide any information in this respect, the Committee reiterates its request for information on the circumstances under which a residence permit can be revoked as a result of the premature termination of employment.

### *Conclusion*

The Committee concludes that the situation in Germany is not in conformity with Article 18§3 of the 1961 Charter on the ground that it has not been established that the existing regulations have been liberalised.

**Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

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

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

It refers to its previous conclusion (Conclusions XX-1 (2012)), where it noted that the issuance of a passport may be refused in individual cases, subject to strict preconditions (Section 7.1 of the Passport Act) or revoked (Section 8 of the Passport Act) when there are reasonable grounds to believe that the passport applicant constitutes a threat to the internal or external security or to other significant interests of the Federal Republic of Germany or intends to evade prosecution. The report indicates that there have been no changes to this situation, which the Committee considered to be in conformity with the Charter.

*Conclusion*

The Committee concludes that the situation in Germany is in conformity with Article 18§4 of the 1961 Charter.



January 2017

## **1961 European Social Charter**

European Committee of Social Rights

Conclusions XXI-1 (2016)

**GREECE**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the 1961 European Social Charter (the 1961 Charter) and the 1988 Additional Protocol (the Additional Protocol). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure

The following chapter concerns Greece which ratified the 1961 Charter on 6 June 1984. The deadline for submitting the 26th report was 31 October 2015 and Greece submitted it on 23 March 2016. On 27 October 2016, the Committee received additional information from the European Bureau for Conscientious Objection with respect to Article 1§2. This information was shared with the Government of Greece.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of the thematic group "Employment, training and equal opportunities":

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

Greece has accepted all provisions from the above-mentioned group.

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

The conclusions relating to Greece concern 16 situations and are as follows:

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

In respect of the other 6 situations related to Articles 1§3, 1§4, 10§1, 10§2, 10§3 and 10§4 the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Greece under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

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

#### **Article 10§1**

- Law No. 4186 of 17 September 2013 restructures the adult training system. In the educational framework outside the formal education system – initial vocational training – pupils can obtain certificates which are recognised at national level following initial and in-house vocational training and the general training of adults.

#### **Article 15**

- Law No.4115 of 30 January 2013 provides for the conversion of special education and training schools into special education and training support centres and the establishment of a school network for education and support. One of the aims of this network is to promote integrate and include students with disabilities in mainstream schools.
- Law No. 3996/2011 on reforming the Labour Inspectorate, regulating Social Security matters and other provisions, which came into force on 5 August 2011, set up the body of labour inspectors who are henceforth responsible for monitoring the implementation of the principle of equal treatment with regard to



persons with disabilities, for advising employers and employees in this field and for ensuring that they comply with the reasonable accommodation obligation.

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

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 4 of the Additional Protocol).

The deadline for submitting that report was 31 October 2016.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

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

### *Paragraph 1 - Policy of full employment*

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

### ***Employment situation***

According to Eurostat, the GDP growth rate decreased seriously during the reference period. It decreased sharply in 2011 by -9.5% and by another -7.3% in 2012. In 2013 and 2014 the GDP growth rate recovered a bit from – 3.2% in 2013 to 0.7% in 2014. The GDP growth rate was well below the EU 28 average which stood at 1.4% in 2014.

The overall employment rate decreased during the reference period, namely from 55.1% in 2011 to 49.4% in 2014. This rate was far below the EU 28 average rate which stood at 64.9% in 2014.

The male employment rate decreased sharply from 73.0% in 2009 to 58.0% in 2014. This rate was considerably below the EU 28 average of 70.1% in 2014. The female employment rate also decreased, namely from 48.9% in 2009 to 41.1% in 2014. This rate was well below the EU 28 average rate of 59.6%. The employment rate of older workers also decreased from 42.4% in 2009 to 34.0% in 2014 which is more than 15% below the EU 28 average rate of 51.8% in 2014.

The unemployment rate increased from 21.4% in 2011 to 24.5% in 2014 thus standing well beyond the EU 28 average rate of 10.2%.

The youth unemployment rate increased from 44.7% in 2011 to an alarmingly high 52.4% in 2014.

During the reference period the long-term unemployment rate (as a percentage of the active population aged 15 – 74) increased sharply from 8.8% in 2011 to 19.5% in 2014.

The Committee notes that the labour market situation in Greece was during the reference period still marked by the economic crisis, as shown particularly by the alarming trend of the employment indicators.

### ***Employment policy***

The Committee notes from the report, that a series of policy measures were undertaken aimed at containing unemployment, retaining existing jobs, creating new jobs, integrating young persons and vulnerable groups in the labour market, undertaking entrepreneurial initiatives and supporting industries particularly affected by the impact of the financial crisis.

The Committee also notes that the EU initiative for implementing the “Youth Guarantee” programme had been taken over at the national level with a budget amounting to 340 Million Euros (financed 50% EU and 50% national budget).

The Committee takes note of the different active labour market programmes mentioned in the report (for instance, programmes for young self-employed and older unemployed persons or the introduction of labour market vouchers for young persons to gain work experience (12 000 beneficiaries).

However, the Committee notes that the report fails to provide the activation rate and the public expenditure on active labour market policies in Greece.

The Committee notes that the labour market measures were not adequate to counter the difficult employment situation in the country. Therefore, the situation is not in conformity with Article 1§1 of the Charter.

### *Conclusion*

The Committee concludes that the situation in Greece is not in conformity with Article 1§1 of the 1961 Charter on the ground that employment policy efforts have not been adequate in combatting unemployment and promoting job creation.

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

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

The Committee takes note of the information contained in the report submitted by Greece. **It also takes note of the information set out in the comments by the European Bureau for Conscientious Objection (EBCO-BEOC), registered on 7 November 2016, and in those by the Greek National Commission for Human Rights (GNCHR), registered on 16 November 2016.**

### **1. Prohibition of discrimination in employment**

The Committee previously examined the legal framework in its Conclusions XIX-1 (2008) and Conclusions XX-1 (2012). The Committee recalls that Law No 3304/2005 'On the application of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age, or sexual orientation', protects all persons against discrimination and, inter alia, covers the fields of access to employment and occupation, employment and working conditions.

The Committee previously noted that the Labour Inspectorate carried out inspections at workplaces to ensure the proper implementation of legislation, with powers to institute criminal proceedings or in some cases impose fines against employers. The Committee requested information on the number of discrimination cases detected by the Labour Inspectorate (Conclusions 2012). The report indicates that the Planning and Coordination Directorate for Labour Relations of the SEPE Headquarters has prepared a relevant table to record in detail statistics and monitor implementation of the principle of equal treatment in work and employment areas, which is filled by the Regional Labour Relations Inspectorates, so that it is promptly updated for any violations. The report indicates that most violations listed in the Annual Activity Report of the Labour Inspectorate relate to gender discrimination issues, as these are reported to a greater extent by employed persons, despite the opportunity offered by the Labour Inspectorate to file complaints for violation of the equal treatment principle, in general.

The Committee noted previously that the Greek Ombudsman ensures and monitors the implementation of the abovementioned anti-discrimination law (Law 3304/2005) as concerns: 1) the public sector; b) local and regional authorities; 3) other public bodies, private law corporate entities, enterprises and organizations which are controlled by the state, or by public law entities. The Committee notes that the Ombudsman is competent under the anti-discrimination law for the implementation of the principle of equal treatment only in the public services. The Committee notes the concern raised by the European Equality Law Network in their Country Report 2015 that the competence of the Ombudsman should be extended to include the private sector as well. The Committee wishes to receive the Government's comments on this point and asks to clarify whether there is a body similar to the Ombudsman to ensure the application of the anti-discrimination law in the private sector.

The Committee asked for information on the number of discrimination cases before the courts (Conclusions XX-1 (2012)). The report indicates that there are no additional data on the number of discrimination cases that have been brought to courts. The Committee requests updated information in the next report on the activities of the Greek Ombudsman as well as on any judicial decisions pertaining to discrimination in employment issued by the courts with specific indications regarding their nature and outcome, and compensation paid to the employees.

The Committee had previously concluded that the situation was not in conformity with Article 1§2 of the Charter on the ground that there are excessive restrictions on the access of nationals of non-European Union States Parties to posts in the public service (Conclusions XX-1 (2012), XIX-1 (2008), XVIII-1 (2006)). The report indicates that there have been no

changes on the applicable rules with regard to the access of third – country nationals to public sector jobs during the reference period. The report adds that nationals of non-EU member states may be recruited to specific posts as teachers, musicians in classical music orchestras and medical staff in infirmaries and hospitals. It is also possible to recruit foreign nationals on private law fixed-term contracts on programmes or projects funded by international organisations, on research or technical assistance programmes or to meet obligations arising from agreements with international organisations. The Committee recalls that nationals of States Parties that are not members of the European Union are not entitled to work in some sectors of the Greek public service even where the posts do not involve the exercise of public authority. It therefore maintains its previous conclusion of non-conformity on the grounds that there are excessive restrictions on the access of nationals of non-EU countries to posts in the public service.

The Committee noted previously that the employment of Roma and migrant workers such as Albanians, Romanians, Bulgarians, Egyptians remained difficult and asked information on measures taken to combat discrimination against these groups (Conclusions XX-1 (2012)).

The report indicates that since 2007 there are no inequalities and discrimination in the labour market with regard to Romanian and Bulgarian nationals as they are EU citizens. Regarding Albanian and Egyptian nationals, the report indicates that the Migration and Social Integration Code – Law 4251/2014 (hereinafter the “Code”) established a comprehensive legislative framework for national immigration policy, with a clear Vocational Guidance in the field of legal immigration of third – country nationals to Greece. The report further states that the existing legal framework, as formulated by the Code and the EU acquis on legal immigration, guarantees full protection and respect of the fundamental rights of migrant workers, without discrimination based on their nationality. Greece has concluded bilateral interstate agreements in the field of migration with Albania and Egypt.

The Committee takes note from a Direct Request of ILO-CEACR of the information concerning the measures envisaged in the framework of the Action Plan for the implementation of the National Strategy for the Social Integration of Roma 2012–20 (Direct Request (CEACR) – adopted 2014, published 104<sup>th</sup> ILC session (2015), Discrimination (Employment and Occupation) Convention, 1958 (No. 111)).

The Committee notes however that the European Commissioner for Human Rights regretted “the stigmatization of migrants in Greek politics and the targeting of other groups namely, Roma, members of the Muslim minority, lesbian, gay, bisexual and transgender (LGBT) persons and human rights defenders” through hate speech. He further referred to the lack of a comprehensive policy to promote migrant integration and improve community relations and intercultural dialogue (Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights CommDH(2013)6, 16 April 2013).

The Committee requests the next report to provide information on the measures adopted to promote equality of opportunity and treatment for members of all ethnic and religious groups with respect to access to employment and particular occupations, and terms and conditions of employment. The Committee requests the Government, in particular, to provide information on the measures taken under the Plan of Action for the Social Integration of Roma and their impact.

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

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

The Committee examined the situation of prisoners in the previous cycle of appreciation. It notes from the report that no changes have occurred in Greek legislation during the reference period as regards the employment of prisoners, which is governed by Articles 41 and 42 of the Criminal Code (Law No. 2776/1999).

The Committee once again refers to its Statement of Interpretation on Article 1§2 (Conclusions XX-1/2012) and asks that the next report contain updated information on the social protection of prisoners working during their detention (employment injury, unemployment, health care and old age pensions).

### ***Domestic work***

The Committee notes from the report that the legislation in force defines domestic workers as all those bound by a work contract who provide dependent work primarily to serve the domestic or personal needs of the employer or the members of his/her family, services primarily related to his/her household needs, as well as his/her personal care, especially when he/she is unable to take care of himself/herself due to age or sickness. Domestic workers who reside in the employer's residence are considered to be domestic household workers. Special provisions regarding the employed persons' working hours, work on Sundays, holidays and at night, days off, extra work and overtime and the provisions on out-of-office movements, do not apply to this category of workers. However, employers must take measures to ensure workers' health and morality, and the free exercise of religion and their political rights (Article 663 of the Civil Code). The report states that the legal provisions incorporating Directive 93/104/EC of the Council of the European Union on certain aspects of the organisation of working hours and Directive 93/104/CE on the organisation of working hours into Greek legislation do not apply to domestic workers. On the other hand, the provisions concerning paid leave apply to all domestic workers, including those who reside in their employer's residence, i.e. the right to paid leave and to holiday allowance. They are also entitled to compensation for termination of the employment contract. The remuneration of domestic workers is governed by Law No. 1876/1990, which applies to all those employed under a private law employment relationship.

The Committee notes that Article 9 of the Greek Constitution forbids the inspection of employers' homes. However, domestic workers have the right to appeal to the Labour Inspectorate and to report their employer for violations of labour laws. If the labour dispute is not settled between the employer and his or her employee, the case is brought before the competent court. Furthermore, the Labour Inspectorate regularly informs domestic workers of their rights and employers' obligations.

According to the report foreign domestic workers are entitled to change employer in the event of exploitation or resignation from work provided they do not change the type of job for which the entry visa was granted and their insurance company during the validity of the original residence and work permit (Article 15 of Law No. 4251/2014, OG vol. A ' / 80).

Referring to its Statement of Interpretation on Article 1§2 (Conclusions XX-1/2012) with regard to work in a family enterprise, the Committee asks that the next report provide information on legal measures taken to prevent forms of exploitation such as an excessive number of working hours or insufficient pay, and the measures taken to monitor the implementation of these provisions.

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

#### ***Service alternative to military service***

The Committee had previously found in its decision on the merits of 25 April 2001 of Complaint No. 8/2000 Quaker Council for European Affairs (QCEA) v. Greece and then in its subsequent conclusions that the situation was not in conformity with 1961 Charter in respect of this point on the ground that the length of alternative service was excessive. In its last conclusion (Conclusions XX-1/2012), the Committee noted that outside the reference period the length of alternative service had been reduced thereby bringing the situation into conformity with the Charter. This has been confirmed in the context of the monitoring of the aforementioned complaint (Findings 2015).

In this connection, the Committee received comments from the European Bureau for Conscientious Objection (EBCO-BEOC) and from the Greek National Commission for Human Rights (GNCHR) that considered that the situation was not in conformity with Article 1§2 of the 1961 Charter. They considered in fact that there was a discriminatory treatment for two categories of conscientious objectors: those who are required to do a full 15-month alternative service instead of the full 9-month military service and those who are required to do a reduced 5-month alternative service instead of a reduced 3-month military service.

The Committee asks that the next report provide information on this issue.

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

In its previous conclusion (Conclusions XX-1/2012), the Committee pointed out that any minimum period of service in the armed forces must be of a reasonable duration and in cases of longer minimum periods due to education or training that an individual has benefited from, the length must be proportionate to the duration of the education and training. Likewise any fees/costs to be repaid on early termination of service must be proportionate. As the current report fails to provide any information on the situation in Greece from this point of view, the Committee asks that the next report provide updated information on the impact of studies or training courses followed by soldiers on the duration of their service in the armed forces and on the possible financial repercussions of early termination of service.

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

The Committee notes from the report that pursuant to Law No. 1545/1985 on the national system for the protection of the unemployed, unemployed persons who do not accept to work in a job that is offered to them in their general professional sector or do not accept to attend vocational training courses organised by the National Employment Agency (OAED), or other bodies cooperating with the OAED, loses their unemployment benefit. Decisions of the Minister of Labour, Social Security and Social Solidarity, issued in consultation with the OAED, determine, in broad groups, the related professions, specialties or types of work that form the general professional sectors. Therefore, if the job offered does not belong to the general professional sector of the unemployed person and he/she refuses it, then the unemployed person does not lose his/her unemployment benefit.

Referring to its Statement of Interpretation on Article 1§2 in the general introduction to Conclusions XX-1/2012, the Committee asks that the next report include relevant information on the remedies that may be used to challenge the decision to suspend or withdraw unemployment benefits.

### ***Privacy and work***

The Committee takes note of Article 5 of Law No. 3846/2010 on guarantees for occupational safety, which govern teleworking.

The Committee notes that a worker's right to earn his or her living in an occupation freely entered upon includes the right to be protected against interference in his or her private life. As the current report does not provide any information on this point, the Committee asks that the next report provide information on the measures taken by the government to ensure that, when organising working hours, employers take due account of their employees' right to a private life and to ensure that any interference in their private life is forbidden and, where appropriate, penalised (Statement of Interpretation on Article 1§2, Conclusions XX-1/ 2012).

### *Conclusion*

The Committee concludes that the situation in Greece is not in conformity with Article 1§2 of the 1961 Charter on the ground that restrictions on employing nationals of non-EU countries to posts in the public service are excessive which constitutes a discrimination on grounds of nationality.



## Article 1 - Right to work

### Paragraph 3 - Free placement services

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

In its previous conclusion (Conclusions 2012) the Committee requested information on the main quantitative indicators used to assess the effectiveness of public employment services. It considered that the absence of the information required amounts to a breach of the reporting obligation entered into by Greece under the 1961 Charter and that the Government has an obligation to provide the requested information in the next report on this provision.

In the reply to the Committee's request, the report provides the following data (data relating to 2014, collected by *the Greek Manpower Employment Organisation – OAED*, and other public entities): a) number of vacancies notified to public employment services (PES): 52,671; b) number of placements by PES: 1,566,139; c) placement rate (i.e. percentage of placements compared to the number of notified vacancies): 90%; d) placements by PES as a percentage of total employment in the labour market: 3,02%; e) number of counsellors working within PES: 675; f) ratio of placement staff to registered job seekers: 1 to 1,501. The relationship between these data is not comprehensible and does not allow the Committee to assess the effectiveness of employment services in Greece. The Committee asks that the next report provide comments on the abovementioned relationship, as well as data for the different years of the reference period, including comparisons and comments. It also asks the respective market shares of public and private services. Market share is measured as the number of placements effected as a proportion of total hirings in the labour market.

*From another source ('An evaluation of the social and employment aspects and challenges in Greece', policy note by European Parliament, January 2014 – Document PE 497.760), the Committee notes the following observations: " ... Current reform efforts focus on the 're-engineering of the OAED': this project, which is backed by the European Social Fund, envisages a plethora of actions and measures to be implemented in the course of the next two years. The reform of the OAED is clearly of critical importance for Greece, since the problem of the record high unemployment can only be effectively addressed by a modern and efficient organization. In this respect, improving the job matching capacity requires special attention. In implementing the reform, there are three issues that deserve to be classified as 'items to watch'...; the first point relates to human resources ...; the second point relates to three groups of the population, namely young people, older workers and immigrants ...; the final point relates to the issue of collaboration with other mediating structures...; the Greek government must determine whether or not private placement agencies can operate as businesses, and, if so, under what conditions will they operate. In developing collaboration ties with other mediating structures, it is evident that a new regulatory framework, providing a common code of practice, setting rules for collaboration and exploiting synergies, is clearly needed".* The Committee asks that the next report comments on these observations and provides updated information on any development concerning OAED during the reference period.

### Conclusion

The Committee concludes that the situation in Greece is not in conformity with Article 1§3 of the 1961 Charter on the ground that it has not been established that public employment services operate in an efficient manner.

**Article 1 - Right to work***Paragraph 4 - Vocational guidance, training and rehabilitation*

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

As Greece has accepted Article 9, 10§3 and 15§1 of the 1961 Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to vocational guidance and training for persons with disabilities are examined under these provisions.

The Committee considered the situation to be in conformity with the 1961 Charter as regards measures relating to vocational guidance (Article 9) and training for persons with disabilities (Article 15§1).

It deferred however its conclusion as regards measures concerning vocational training and retraining of workers (Article 10§3). For the same reasons, the Committee defers its conclusion on Article 1§4.

*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 contained in the report submitted by Greece.

It previously noted (Conclusions XIX-1 (2008)) that, pursuant to the Equal Treatment Act No. 3304/2005, direct and indirect discrimination in access to all types and levels of vocational guidance is forbidden. The report confirms that the current framework of counselling and vocational guidance and career development services provided in Greece ensures the equal treatment of nationals of other States parties to the Charter regarding the right to vocational guidance. A number of measures, described in the report, have been taken to facilitate in practice the access of foreign nationals to vocational guidance.

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

The Committee takes note of the institutional reforms undertaken in the field of vocational guidance during the reference period. In particular, the operating framework for the counselling and vocational guidance centres was updated in 2012 after different bodies involved in the provision of vocational guidance had been merged in 2011, including the National Centre for Vocational Guidance (EKEP), whose coordinating functions were taken over in 2013 by the newly established National Organisation for the Certification of Qualifications & Vocational Guidance (EOPPEP). Furthermore, an independent vocational guidance department was established in 2014 within the Ministry of Culture, Education and Religious Affairs.

The National Organisation for the Certification of Qualifications & Vocational Guidance, which is under the supervision of the Ministry of Culture, Education and Religious Affairs, is responsible for a wide range of activities. As regards vocational guidance, it is responsible, at national level, for providing technical assistance to the Education and Labour Ministries, for designing and implementing a national vocational guidance policy; for coordinating and promoting cooperation between stakeholders and vocational guidance providers; for developing sustainable vocational guidance services and career development and information tools to support citizens of all ages, education; for upgrading skills of career counsellors and establishing quality criteria for vocational guidance services providers (see details in the report).

The Committee takes note of the different activities implemented by the EOPPEP during the reference period, to set quality standards for public and private counsellors in the education as in the labour market and train them, as described in the report. It notes in particular: the organisation of 27 training seminars for personnel offering counselling, vocational guidance and support services to public and private bodies in education, training and employment involving all in all over 1700 participants; the issuing of a Code of Conduct for Counselling and Vocational Guidance Services; the Preparation – Certification of the Professional Outline of the Career Counsellor/ Vocational Guidance (over 5000 professionals in the Vocational Guidance sector are expected to be certified); the development of sectoral studies and self-assessment guides for vocational guidance counsellors and bodies to ensure quality of services; a Preparatory Study – Research for conformity with quality criteria in Counselling and Vocational Guidance structures of education and initial training; the development of the “IRIDA” Lifelong Vocational Guidance Forum to facilitate cooperation and coordination of Vocational Guidance Bodies and Counsellors; the Creation of a Catalogue for Private Counselling and Vocational Guidance Bodies; the implementation of specific programmes (E-Guide+ Quality Vocational Guidance for disadvantaged and migrant job seekers; Inno-Career project: Develop prototype training System for Vocational Guidance Counsellors).

The report also indicates a number of measures taken to ensure dissemination of the relevant information. In particular, information related to vocational guidance is available

through the online vocational guidance internet portals of the EOPPEP, which are addressed to all stakeholders, without any restriction, and are interconnected to the internet sites of the Manpower Employment Organization (OAED) and of the Ministry of National Defence, thereby ensuring broad access of more beneficiaries. In addition to the websites addressed specifically to young persons and adults (see below), the report refers to the national database of educational opportunities "Navigator", developed in 2009 and still updated, which is connected with the national databases of other European countries, as well as with the European Information Portal "Ploteus" on "Learning Opportunities and Qualifications in Europe". The National Organisation for the Certification of Qualifications & Vocational Guidance also systematically produces informative material, studies on the labour market and self – assistance material to inform and raise awareness of all citizens of all ages on lifelong career development. During the reference period, 10 studies – textbooks for career, entrepreneurship and employment topics were prepared and published, at a total of 8000 copies, which were distributed free of charge to beneficiaries (Career Counsellors and the general public).

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

The report describes the role and functioning of the Counselling and Vocational Guidance Centres (KESYP), operating in secondary education, at prefectural level. In cooperation with teachers, they coordinate the implementation of School Vocational Guidance in schools of their competence and provide counselling support to young persons aged up to 25 and to parents on vocational guidance issues. They also organise activities related to vocational guidance and cooperate with actors of the school community, social partners and local authorities. The School Vocational Guidance Counsellors update and support interested teachers and cooperate in the design and implementation stages of Career Education Programmes (including, for example, career days) which are addressed to all students attending secondary education schools.

In higher education, vocational guidance is provided by the Employment and Career Structures (Liaison Offices, In-Service Traineeship Offices and Innovation and Entrepreneurship Units) of the University and Technological Sectors of Higher Education Institutes. In Second Chance Schools, counselling offices operated by a career counsellor and a psychologist provide vocational guidance to adults who have not completed their compulsory secondary education.

During the reference period, according to the report, 79 centres, with 158 school vocational guidance counsellors, provided guidance services to some 600 000 students in secondary education. According to the report, on average during the reference period 39 664 students visited annually the Counselling and Vocational Guidance Centres and these centres organised on average 1 557 activities per year (events, workshops etc.). The Committee asks the next report to clarify the number of staff involved in the provision of guidance in the education system, including higher education and second-chance schools, in addition to the counsellors operating within the counselling and vocational guidance centres. It furthermore takes note of the expenditure for guidance indicated in the report, in relation to the Life-long learning programme, Euroguidance, the setting-up of databases for learning opportunities and other specific projects. It asks the next report to present distinctly the information concerning the expenditure directly allocated to counselling and guidance in the education system and that concerning instead vocational guidance on a more general level (for example, related to the EOPPEP and its general coordination activities, as well as those addressed at improving the quality of all categories of guidance counsellors).

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

The Committee previously noted that, in the labour market, vocational guidance services are provided to registered unemployed persons by the Employment Promotion Centres of the Greek Manpower Employment Organization (OAED), operating throughout the country.

Counselling services and information on career and entrepreneurship issues are also provided from structures of the social partners (Greek General Confederation of Labour, General Confederation of Professionals, Craftsmen and Merchants, etc.) and in the context of the various training and support programmes, targeted at young entrepreneurs, workers, unemployed persons and socially vulnerable groups. In addition, some vocational guidance activities are provided by lifelong career development services in the private sector (lifelong learning centres, private employment agencies, temporary employment agencies).

The Committee takes note of the activities implemented during the reference period by the National Organisation for the Certification of Qualifications & Vocational Guidance to support the work of the Counselling and Vocational Guidance Centres, implementing retraining actions for school counsellors and developing vocational guidance and information tools, as described in the report. In particular, among the activities implemented during the reference period, the Committee notes the setting-up of an interactive counselling and vocational guidance website for adults (30 000 users since its launch in February 2014, till July 2015) offering: vocational guidance tests; thematic information catalogues on education and work in Greece and Europe; interactive Self – Help Exercises aimed at helping adults to cultivate lifelong career management skills and a digital e-portfolio tool (Career Planning File). The setting-up of a tool for online direct exchanges with a specialised career counsellor is also planned, according to the report. The Committee takes note also of the initiatives undertaken by the Manpower Employment Organisation to offer counselling support to unemployed persons, the setting-up in 2014 of 30 Liaison offices of the apprenticeship schools of the OAED under the lifelong learning operational programme; the organisation of workshops for unemployed persons, of five employment forums and other initiatives taken to train or retrain vocational guidance counsellors of the OAED.

The data presented in the report, concerning group and individual vocational guidance programmes (attended by 129 and 237 persons respectively) during the reference period, show that the number of persons receiving individual information for education and training opportunities has fallen from 1132 persons in 2011 to 169 persons in 2014; the Committee asks whether there is any specific reason for such a decrease, which also concerns the minors seeking professional information (528 in 2011, against 97 in 2014), and in particular whether it is related to the level of resources of the model vocational guidance centre, which is operated only by three guidance counsellors, according to the report.

The Committee takes note of the expenditure for guidance indicated in the report, in particular the data on expenditure for programmes more specifically related to guidance in the labour market. With reference to the questions already raised above in respect of guidance in the education system, it asks however the next report to present more distinctly the information concerning the expenditure directly allocated to counselling and guidance in the labour market. It recalls in this respect that, in order to assess the effectiveness of the vocational guidance provided, it needs to find, in all reports concerning Article 9, information on the resources, staff and number of beneficiaries of vocational guidance respectively in the education system and in the labour market. It accordingly asks the next report to provide updated information on these items.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Greece is in conformity with Article 9 of the 1961 Charter.

## **Article 10 - Right to vocational training**

*Paragraph 1 - Promotion of technical and vocational training ; access to higher technical and university education*

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

### ***Secondary and higher education***

The Committee takes note of the legislative developments during the reference period, such as Law 4186/2013 entitled "Restructuring the Secondary Education System and other provisions" (O.G A/193), concerning the system of vocational training and apprenticeship, falling under the Ministry of Labour, Social Security and Social Solidarity, which oversees Vocational Apprenticeship Schools and Vocational Training Schools (SEK), Experimental Vocational Training Schools (PSEK.) and the Vocational Training Institutes (IEK), which are initial vocational training providers operated by the Greek Manpower Employment Organisation (OAED).

The Committee notes that SEKs provide initial, three year vocational training services, to graduates of compulsory formal education. It also notes that two experimental vocational training schools were established, relating exclusively to specialities in the tourism sector.

According to Law 3748/2009, Vocational Senior High School graduates may compete for places in both the university and technological fields, as well as in the other schools covered by the system.

The Committee notes from Cedefop (Country statistical overviews, 2015) that Greece has relatively low figures on many indicators compared with the EU average. The share of upper secondary students enrolled in VET is low (33,1% compared to 50,4% for the EU). The percentage of adults involved in lifelong learning in 2013 stood at 2,9%, compared to 10,5% of the EU average.

The Committee recalls that under Article 10§1 of the Charter the States Parties must:

- ensure general and vocational secondary education, university and non-university higher education and other forms of vocational training;
- build bridges between secondary vocational education and university and non-university higher education;
- introduce mechanisms for the recognition/validation of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general, technical and university higher education;
- take measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market.

The Committee asks the next report to provide information regarding the outcome of the above legislative developments, especially in the light of the following:

- introducing mechanisms for the recognition/validation of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general, technical and university higher education;
- taking measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market.

### ***Measures to facilitate access to education and their effectiveness***

The Committee recalls that under Article 10§1 of the Charter facilities other than financial assistance to students must be granted to ease access to technical or university higher education based solely on individual aptitude. This obligation can be achieved namely by:

- avoiding that registration fees or other educational costs create financial obstacles for some candidates;
- setting up educational structures which facilitate the recognition of knowledge and experience, as well as the possibility of transferring from one type or level of education to another.

The main indicators of compliance include the existence of the education and training system, its total capacity (in particular, the ratio between training places and candidates), the total spending on education and training as a percentage of the GDP; the completion rate of young people enrolled in vocational training courses and of students enrolled in higher education and the employment rate of people who hold a higher-education qualification. The Committee asks the next report to provide information regarding all these points.

In its previous conclusion (Conclusions 2012) the Committee found that the situation was not in conformity with the Charter as equal treatment of nationals of other States Parties legally resident in Greece as regards access to vocational training was not guaranteed because access was subjected to the availability of places.

The Committee notes from the report of the Governmental Committee ( GC(2013)20,§93) that all students have to sit the national entrance exams on the same terms and conditions for a certain number of places determined every year by the Ministry of Education for all higher technical educational institutions and universities. Alien candidates for admission to tertiary education can sit the national entrance exams. In addition, aliens can choose to be included in the special categories of candidates under favourable criteria governing such categories.

The Committee further notes from the report that admission to higher education schools and departments is effected through Panhellenic Examinations, a system which is centrally coordinated by the Ministry of Culture, Education and Religious Affairs. The number of persons admitted to each university department is subject to the "numerous clausus" principle and is set on an annual basis by the Ministry of Culture, Education and Religious Affairs.

#### *Conclusion*

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

## **Article 10 - Right to vocational training**

### *Paragraph 2 - Apprenticeship*

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

According to the report, Law 3475/2006 entitled “Organising and operating secondary education and other provisions” (O.G. A/146) was supplemented and amended by the provisions of Law 4186/2013 entitled “Restructuring secondary education and other provisions” (O.G. A/193). Secondary vocational training is provided by Vocational Senior High Schools (EPAL) and Vocational Schools (EPAS). EPALs are divided into daytime and evening ones. Attendance in daytime Vocational Senior High School lasts three years, while in the evening ones four years. Under the provisions of Law 4186/2013, the Vocational Senior High School offers the secondary course of study and the apprenticeship class, which is a post – secondary course of study and is not included in the formal educational system. Attendance lasts one year and the dual education system is applied, which includes apprenticeship with on-the-job training, a specialisation course and preparatory certification classes in the school unit. The responsibility for implementing the apprenticeship class falls on the Vocational Senior High School and the OAED.

In accordance with Law 3748/2009, EPAL graduates may compete for places in the university and technological fields, according to the group of courses in which they are examined nationwide.

According to the report, apprenticeship is a vocational and technical education system in the context of secondary education and the implementation of the apprenticeship programmes is carried out, for the theoretical and laboratory part, at the Vocational Apprenticeship Schools and, for the practical part, at entities/ companies of the private or public sector.

The Committee takes note of the measures implemented by the OAED, such as the establishment of liaison offices. These offices were established to link the educational process with the needs of the labour market for implementing in-service traineeship of students, promoting employment of graduates and monitoring their educational and occupational evolution.

The Committee notes that as regards the employment of persons attending the OAED Vocational Apprenticeship Schools and the budget of in-service traineeship, in the school year 2010 – 2011 out of 10,475 attending, 67% of were employed and the in-service traineeship budget amounted to € 9 million. In the school year 2014-2015 out of 10,374 persons attending 73% were employed, with the total budget amounting to € 10 million. The in-service traineeship of students is co-financed by the Education and Lifelong Learning budget up to 30/6/2015.

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 vocational education. The Committee asks the next report to provide information about the types of contracts concluded between the young person and the employer as well as the division of time between theoretical and practical learning.

The Committee recalls that in its decision on the merits of 23 May 2012 of the Complaint No. 66/2011 General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece, it concluded that there was a violation of Article 10§2 of the 1961 Charter on the ground that the provisions of Section 74§9 of Act No. 3863/2010 did not provide for an



adequate system of apprenticeship and other systematic arrangements for training young boys and girls in their various forms of employment.

The Committee further recalls that it found that this situation had not been brought into conformity with the Charter (Findings 2015). The next follow-up assessment will be made on the basis of the information to be provided in October 2017.

In the meantime, the Committee reserves its position on this issue.

*Conclusion*

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

## **Article 10 - Right to vocational training**

### *Paragraph 3 - Vocational training and retraining of adult workers*

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

#### ***Employed persons***

The Committee recalls that under Article 10§3 of the Charter States must take preventive measures against deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic development. The States should provide information on the types of continuing vocational training and education available, overall participation rate of persons in training, percentage of employees participating in vocational training and total expenditure.

The Committee takes note of the statistics regarding training programme for employed persons (ELEKP- Single Account for Implementing Social Policies). It notes that the total number of trainees stood at 72,560 persons in 2013 and 35,000 persons in 2014. The total budget of these trainings was € 58 million and € 25 million respectively. The Committee asks what are the reasons for this decline in numbers. It further asks what is the overall percentage of employed persons who undergo training.

The Committee also asks the next report to provide updated information regarding the legislation regarding individual leave for training and its characteristics.

#### ***Unemployed persons***

The Committee takes note of the training programmes implemented by the Ministry of Labour, Social Security and Social Solidarity for unemployed persons.

- Training of unemployed persons in accredited Vocational Training Centres (KEK), with mandatory employment in jobs relating to construction/ engineering projects. The budget amounts to € 89 million and the number of beneficiaries to 7.000 unemployed persons. The goal of the interventions is to adapt and enhance the knowledge and skills of the workforce, as well as to facilitate their access to employment in the field of construction/ engineering projects.
- Training of unemployed persons in accredited Vocational Training Centres (KEK), with mandatory employment in jobs relating to sustainable environmental management (green jobs). The budget amounts to € 95 million and the number of beneficiaries to 7,500 unemployed persons. The aim of the interventions is to adapt, to continuously upgrade the knowledge and skills of the workforce and to facilitate access to employment in the sector of "green jobs".
- Provision of e-learning services of information and communication technologies (ICT) to unemployed persons The total budget amounts to € 15,6 million and the number of beneficiaries to 10,000 unemployed persons. The aim of the actions concerned is to obtain knowledge certification through distance training in basic information technology and communication (ICT) skills by recognized certification bodies.
- Training of unemployed persons in basic computer information and communication technology skills The total budget amounts to € 30 million and the number of beneficiaries to 30,000 unemployed persons. The aim of the Actions is to obtain knowledge certification in basic information technology and communication (ICT) skills by recognized certification bodies.
- Training of unemployed persons in accredited Vocational Training Centres, with mandatory employment in jobs relating to tourism The total budget amounts to € 45,4 million and the number of beneficiaries to 3,600 unemployed persons. The aim of the interventions is to adapt, to continuously upgrade the knowledge and skills of the workforce and to facilitate access to employment in the tourism sector. Actions include theoretical training and in-service traineeship, linked to

- mandatory employment of at least 30% of trainees in jobs relating to the subject of training, for three months and at least 70 daily-wages (full time).
- Greek language learning programmes in accredited Vocational Training Centres (KEK) for unemployed repatriates – migrants – refugees and unemployed persons for whom the insufficient knowledge of the Greek language is an obstacle to their social integration. The total budget amounts to € 32 million and the number of beneficiaries to approximately 8,000 unemployed persons. The aim of the interventions is to teach Greek to unemployed repatriates, migrants and refugees, in order to achieve their smooth and dynamic adjustment and their social integration in the Greek society.

The Committee also takes note of the labour market training vouchers and subsidies for unemployed persons to take part in training activities in different sectors of the economy, with mandatory employment for a certain period of time.

Committee recalls that the indicators of particular interest when it comes to vocational training for the unemployed are the number of participants, the development in national expenditure and the results of the effort, i.e. the employment effect (Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§3). The Committee asks the next report to provide information on the activation rate – i.e. the ratio between the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures.

#### *Conclusion*

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

## **Article 10 - Right to vocational training**

### *Paragraph 4 - Encouragement for the full utilisation of available facilities*

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

### ***Fees and financial assistance***

In its Conclusions XVI-2 the Committee noted that according to Act No 2224/94, equal treatment was ensured with respect to all types of educational allowances for nationals of the other States Parties, lawfully resident or regularly working in Greece. The Committee asks whether there have been any changes to the situation regarding financial assistance (allowances, scholarships, grants) for nationals of other States Parties lawfully resident in Greece for higher vocational education.

In its previous conclusions (Conclusions XVIII-2, XIX-1, XX-1) the Committee took note of the system of scholarships and grants. The Committee asks the next report to provide updated information regarding the system of financial assistance in higher education, including scholarships, loans and grants. It wishes to be informed of the total number of scholarships granted to trainees at the Public and Private Vocational Training Institute, both A type (merit based) and B type (income tested).

### ***Training during working hours and the efficiency of training***

The Committee asks the next report to provide updated information regarding whether the time spent on supplementary training at the request of the employer is included in the normal working hours.

The Committee also asks what measures are taken to evaluate vocational training programmes for young workers, including the apprenticeships. In particular, it asks the next report to provide information regarding the participation of employers' and workers' organisations in the supervision process.

### ***Conclusion***

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

## **Article 15 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement**

### *Paragraph 1 - Education and training for persons with disabilities*

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

In 2014-2015 there were 291 special education schools in primary education and 126 in secondary education and 3 899 pupils with disabilities were attending school in regular classes with simultaneous support in mainstream primary schools and 665 in secondary schools. According to the report there has also been an increase in the number of teachers recruited as part of the specialised educational support programme for the integration of students with disabilities, from 896 in 2010-2011 to 2 301 in 2014-2015.

### **Definition of disability**

Greece ratified the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol on 31 May 2012. The first report on the implementation of the Convention was published in 2015.

### **Anti-discrimination legislation**

In its previous conclusion (Conclusions 2012), the Committee considered that the situation in Greece was not in conformity with the Charter on the grounds that it had not been established that the anti-discrimination legislation covering education for people with disabilities was adequate.

The report points out that the UN Convention on the Rights of Persons with Disabilities was ratified and incorporated into Greek legislation by Law No. 4074 of 11 April 2012 on the ratification of Convention Rights of Persons with Disabilities and its Optional Protocol. Article 24 of the Convention, which according to the report, has become binding for Greece, refers to the education of persons with disabilities. It concerns in particular: (1) the recognition of the right of persons with disabilities to education and the exercise of this right without discrimination and based on equal opportunities, (2) the implementation of this right through ensuring a number of parameters (such as, inter alia, non-exclusion from the mainstream education system and access to an inclusive, quality, primary and secondary education), and (3) taking a series of measures relating, inter alia, to supporting persons with disabilities in environments that maximize their academic and social development, in agreement with the goal of full integration. The Committee asks that the next report inform it of the concrete impact of this law on the integration of pupils and students with disabilities into mainstream education.

According to the Ombudsman's annual report for 2014, 50 complaints concerning discrimination on grounds of disability were examined in 2014, 39 of which were lodged in 2014 while 11 dated back to previous years. 29 cases of discrimination on grounds of disability were noted in the field of education.

In the light of the information provided in the report, the Committee considers that the situation has been brought into conformity with Article 15§1 of the Charter. Nevertheless it asks that it continue to be informed on this point.

### **Education**

In its previous conclusion (Conclusions XX-I (2012)), the Committee requested clarification on the low number of students continuing education after primary school and information on measures taken to remedy this situation.

Law No.4115 of 30 January 2013 provides for the conversion of special education and training schools into special education and training support centres and the establishment of

a school network for education and support. One of the aims of this network is to promote integrate and include students with disabilities in mainstream schools.

According to the report the National Institute for the Deaf (E.I.K) and the Centre for the Education & Rehabilitation of the Blind (KEAT) come under the Ministry of Labour, Social Security and Social Solidarity (Law No. 4052 of 3 January 2012). The main aim of the former is to provide education for deaf persons with a view to their vocational rehabilitation. The latter offers the possibility of education to persons with a visual impairment as from pre-school age; tutorial education is also available at secondary school level.

The report also presents the various measures implemented by the different bodies to improve disabled persons' access to and participation in the education system:

- The Educational Policy Institute (Law No. 3966/2011) focuses on enhancing the participation of students with disabilities in the educational system and on reinforcing and improving the quality of teacher training at all levels of compulsory education in the following respects: (1) development of accessible educational and teaching aids for students with disabilities; (2) individual support for pupils by using new technologies and digital teaching materials; (3) converting special education and training schools into special education and training support centres.
- The Ministry of Education and Religious Affairs is also carrying out a series of projects related to Special Education, co-financed by the Greek government and the European Social Fund, aimed at its improvement and evaluation.

The report also mentions that 1 342 teachers in 2012-2013 and 841 in 2014-2015 followed the above-mentioned training programmes.

According to the 2014 figures of the Academic Network of European Disability experts (ANED), the percentage of persons with disabilities aged 30 to 34 who completed post-secondary studies was 30.6% compared to 35.4% of non-disabled persons. The percentage of young people with disabilities aged 18 to 24 who dropped out of school early was 37.2% compared to 6% of non-disabled young people in this age group. The Committee invites the Greek Government to submit its observations on this point. It asks that the next report contain updated figures on the number of children with disabilities who drop out of school early.

### ***Vocational training***

Law No. 4186 of 17 September 2013 restructures the adult training system. In the educational framework outside the formal education system – initial vocational training – pupils can obtain certificates which are recognised at national level following initial and in-house vocational training and the general training of adults.

The report describes the training structures for persons with disabilities (maximum 400 pupils) run by the National Employment Office (OAED) which has developed activities for persons with disabilities:

- The "Athens School for Persons with Disabilities" in Galatsi offers vocational specialisation for unemployed persons with disabilities (aged 18 – 55), with a disability rate of at least 50% and physical, organic and mobility problems.
- *The Model Industrial Unit (P.V.M)*, targeting mentally retarded trainees (aged 14 – 24), is aimed mainly at promoting and developing knowledge and skills for their vocational rehabilitation.

Under the Operational Programme entitled "Human Resources Development", various measures were taken by accredited training centres specialising in social and vocational integration:

- Programmes aimed at providing complete pre-training, training and accompanying counselling services, in particular unemployed persons with disabilities, irrespective of their level of education (1 040 beneficiaries in 2014).
- Interventions in favour of vulnerable social groups, including persons with disabilities, providing pre-training and training activities, to ensure equal access to the labour market for job seekers (469 persons with disabilities had access to this programme).

The report presents developments in the legal framework during the reference period (Laws No. 4186/2013 and No. 4264/2014) facilitates the access of persons with disabilities to higher education, via the admission-place transfer process at universities.

The report also explains that in 2012 the Web Portal, which aims to provide interactive consultation and vocational guidance for young people including young people with disabilities, has become operational.

### *Conclusion*

The Committee concludes that the situation in Greece is in conformity with Article 15§1 of the 1961 Charter.

## **Article 15 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement**

### *Paragraph 2 - Employment of persons with disabilities*

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

### ***Employment of persons with disabilities***

In its previous conclusion (Conclusions XX-I (2012)), the Committee requested information on the number of people with disabilities, the number of people with disabilities of working age, the number of those employed in the open market and in sheltered employment respectively, and the number of persons with disabilities seeking employment. It also pointed out that in the event this information was not provided in the next report, there would be nothing to demonstrate that the situation in Greece was in conformity with Article 15 §2.

The report states that in 2014, 18 186 persons with disabilities in Greece were registered as unemployed but that the figures requested by the Committee were not available. As the Greek Statistics Office recognises the need for statistics on disability, it has included these questions in its surveys since 2014, so that they can be made available during the subsequent cycle. In the meantime the Committee reserves its position on this point.

The Committee notes from the ANED report that in 2014 the percentage of women with disabilities aged 20 to 64 in employment was 26% compared to 47.1% of non-disabled women and that the percentage of unemployed men with disabilities was 40.1% compared to 66.7% for non-disabled men. The unemployment rate for women with disabilities was 31.4% compared to 28.8% for non-disabled women. The unemployment rate for men with disabilities was 35.8% compared to 22.2% for non-disabled men.

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

In its previous conclusion (Conclusions XX-I (2012)), the Committee asked what steps had been taken to ensure compliance with the reasonable accommodation requirements. In reply, the report stated that Law No. 3996/2011 on reforming the Labour Inspectorate, regulating Social Security matters and other provisions, which came into force on 5 August 2011, set up the body of labour inspectors who are henceforth responsible for monitoring the implementation of the principle of equal treatment with regard to persons with disabilities, for advising employers and employees in this field and for ensuring that they comply with the reasonable accommodation obligation.

The Committee draws attention to its previous conclusion (Conclusions XX-I (2012)) which refers to the relevant legislation concerning the non-discrimination of persons with disabilities in the field of employment, in particular Law No. 3304/2005 on application of the equal treatment principle, which explicitly prohibits any direct or indirect discrimination on grounds of disability in the field of employment and stipulates that it is compulsory to ensure the reasonable accommodation of working conditions to guarantee the effectiveness of anti-discrimination legislation in the field of employment, unless such accommodation imposes a disproportionate burden on the employer. According to Greece's initial report to the Committee on the Rights of Persons with Disabilities (2015), no clarifications of the concept of "disproportionate burden" are given in the law because it is evaluated on a case-by-case basis. It takes account of several factors: the nature and necessary costs of the accommodation, the impact of the accommodation on the functioning of the enterprise, including the impact on other employees with regard to the exercise of rights, the enterprise's financial possibilities, the type and size of the enterprise as well as the total number of employees.

The Committee takes note of the legal framework (Civil Servants Code (Law No. 3528/2007), Laws Nos. 4305/2014 and 3731/2008) under which persons with disabilities or with a disabled relative are entitled to reduced working hours and extra leave.



The Committee once again asks whether the reasonable accommodation obligation has prompted an increase in employment of persons with disabilities in the open labour market.

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

In its previous conclusion (Conclusions XX-I (2012)), the Committee asked how many people with disabilities were integrated yearly through compulsory placement and what measures were taken to ensure compliance. In reply, the report presents the programmes carried out by Greek Manpower Employment Organisation (OAED) during the reference period:

- Pursuant to the provisions of Law No. 2643/1998 concerning the recruitment of persons with disabilities in the public and private sectors, 350 persons with disabilities and 90 relatives of persons with disabilities were given jobs in the public services, public law legal entities or local self-government authorities. According to the information provided to the Governmental Committee, a legislative committee responsible for establishing a more modern and more efficient legal framework for integrating vulnerable social groups into the labour market had been set up by decision of the Ministry of Labour Social Security and Social Services.
- Employer support programme to recruit 2.300 unemployed persons with disabilities and a subsidy programme for 50 ergonomic workstations for persons with disabilities;
- Subsidising of 50 workstations and 600 jobs for persons with disabilities (€22.5 million allocated from the State budget and the OAED for persons with disabilities).
- Subsidy programme for business enterprises to encourage them to employ people in difficult situations, including persons with disabilities.
- According to the information provided to the Governmental Committee, the programme for the employment of persons with disabilities had helped 531 persons in 2011 and 153 persons in 2012 to find employment. The programme aimed at independent workers had concerned 264 persons in 2011 and 176 in 2012.

In its previous conclusion (Conclusions XX-I (2012)), the Committee asked for detailed information on sheltered or semi-sheltered structures, as regards the number of people with disabilities involved in such structures, the criteria for accessing them, the level of pay of workers with disabilities and whether these structures provided for the possibility of transfer to ordinary labour market. As the report does not address this issue, the Committee reiterates its request.

The report also mentions a number of measures aimed at integrating persons with disabilities into the labour market during the reference period (2011-2014), in particular in the context of the “Human Resources Development” operational programme 2007-2013 run by the Ministry of Labour Social Security and Social Solidarity:

- Some 8 200 persons benefited from this programme, 469 of whom were unemployed persons with disabilities;
- Mobilisation of local stakeholders to ensure job creation for unemployed persons belonging to vulnerable social groups; 131 action plans were implemented and by late 2014, 12 298 persons had benefited from such plans, 919 of whom were persons with disabilities.
- Action taken by social services: 1 555 persons with disabilities benefited from the services offered by organisations providing care for children and for the elderly; the national network for combating poverty and social exclusion recruited 1 140 persons to run 262 bodies and 4 598 persons with disabilities benefited from their services.

According to the information provided to the Governmental Committee, in order to foster the integration of persons with disabilities in the open market, Law No. 4019/2011 on the Social Economy and Social Entrepreneurship established Social Cooperative Enterprises of Integration for the purposes of the economic and social integration of persons belonging to vulnerable groups, including persons with disabilities. Two Social Cooperative Enterprises of Integration have already recruited persons with disabilities and four others are expected to do so shortly.

*Conclusion*

The Committee concludes that the situation in Greece is not in conformity with Article 15§2 of the 1961 Charter on the ground that persons with disabilities are not guaranteed effective access to the open labour market.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 1 - Applying existing regulations in a spirit of liberality*

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

It notes that all nationals of European Economic Area (EEA) member States have free and full access to the labour market and are exempt from the requirement to obtain a work permit, as are their family members. Work permits are required for nationals of the following States Parties to the Social Charter: Albania, Andorra, Armenia, Azerbaijan, Bosnia-Herzegovina, Croatia (until 1 July 2013), Georgia, Republic of Moldova, Montenegro, Russian Federation, Serbia, "the Former Yugoslav Republic of Macedonia", Turkey and Ukraine.

### **Work permits**

The Committee notes that non-European Union (EU) nationals who wish to work in Greece must obtain an employment visa and a residence permit for employment purposes.

In accordance with the new Migration Code (Law No. 4251/2014), Greece implements a quota system for the entry of non-EU nationals for employment purposes, and these quotas are specified in a ministerial decision published every two years which sets the maximum number of salaried jobs per region and per specialism. For the decision to be adopted, opinions of competent authorities (Greek Economic and Social Council, Greek Employment and Labour Organisation, the Regions) concerning current labour requirements in Greece are taken into account. These requirements are established primarily on the basis of the following criteria: consultations between regional authorities and employers' agencies, interests of the national economy, sustainability of employment, supply of labour by Greek nationals, EU citizens or non-EU nationals who are legally resident in Greece, and percentage levels of unemployment. On the basis of these maximum numbers, employers who wish to recruit salaried staff must approach the decentralised administration with authority over their place of residence, also presenting i) a contract of employment valid for at least one year, which clearly states that the monthly pay of the person to be employed will be at least equal to that of an unskilled worker, and ii) a tax certificate proving that the employer can indeed pay this remuneration. The secretary general of the decentralised administration can only approve the employment of nationals of third countries if the specialism concerned is mentioned in the aforementioned ministerial decision and if the authorised number has not already been reached. This approval is sent to the consular authority, which the employees concerned are asked to attend so that they can sign the contract of employment and receive their entry visa.

### **Relevant statistics**

The Committee's assessment of the degree of liberality in applying the existing regulations is based on statistics concerning the work permit refusal rate for both first applications and renewal applications. A high percentage of the accepted first work permit or renewal applications are made by nationals of States Parties to the Charter, and the low rate of refusal of such applications clearly shows that the existing regulations are applied in a spirit of liberality.

Certain economic or social reasons can justify placing limitations on foreign workers' access to the national labour market. This can be done, for example, in order to tackle unemployment in a country by favouring the employment of its own nationals. However, to prevent a breach of Article 18 of the Social Charter, the implementation of such policies limiting the access of nationals of third parties to the national labour market must not result in the complete exclusion of nationals of non-EU (or non-EEA) States Parties to the Charter from this market, or heavily restrict their access to it.

In its previous conclusion (Conclusions 2012), the Committee noted that the report did not provide any information concerning the work permit refusal rate for nationals of non-EEA States (total number of applications for residence/work permits and total number of residence/work permits granted or refused). It therefore found that it had not been established that the existing regulations were applied in a spirit of liberality in Greece.

The Committee requested that the next report state the number of work permits granted to nationals of non-EEA States, and the rate of refusals to grant such permits to nationals of these States. In response to the Committee's request concerning non-EEA nationals of States parties to the Charter, the report states that in 2011, 89,012 work permits were granted and 4,488 applications, or 5%, were refused; in 2012, 65,132 permits were granted and 11,689, or 18%, were refused; in 2013, 54,036 permits were granted and 10,600, or 19.6%, were refused; and in 2014, 49,116 permits were granted and 5,576, or 11.4%, were refused. The Committee observes that the report does not provide any statistics concerning work permit renewal applications and refusals of work permit renewals, and reiterates its request in this regard. However, on the basis of the statistics provided, the Committee observes that the percentage of work permit applications from nationals of non-EEA States Parties to the Charter which are accepted is high and that the proportion of refusals is low, which clearly shows that the existing regulations have been applied in a spirit of liberality.

Finally, the Committee also notes from the OECD Report, International Migration Outlook 2015, concerning recent developments in migration movements and policies, that there has been year-on-year growth in residence permits held by nationals of non-EU countries. According to the report, 440,000 permits were granted in 2012, and 450,000 in 2014. The most heavily represented countries of origin were Albania (300,000 residence permits), Ukraine, Georgia and the Russian Federation.

#### *Conclusion*

The Committee concludes that the situation in Greece is in conformity with Article 18§1 of the 1961 Charter.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 2 - Simplifying existing formalities and reducing dues and taxes*

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

### ***Administrative formalities and time frames for obtaining the documents needed for engaging in a professional occupation***

The Committee recalls that conformity with Article 18§2 presupposes the possibility of completing formalities in the country of destination as well as in the country of origin and obtaining the residence and work permits at the same time and through a single application.

In its previous conclusion (Conclusions 2012), the Committee concluded that the situation in Greece was not in conformity with Article 18§2 of the 1961 Charter on the grounds that formalities concerning the issuance of work and residence permits had not been simplified during the reference period.

In reply to the Committee's questions, the report indicates that the transformation of the Aliens and Immigration Services of the Decentralised Administrations to 'one-stop shop' services has been completed putting in place 57 One-Stop Shop Services throughout the country in accordance with the law of 20 September 2011 on the reorganisation of the permit system for the residence of foreign citizens in Greece. The Committee notes from another source, the 2015 OECD Report on migration movements, that the 57 One-Stop Shops, operational by the end of 2014, are expected to improve information and other services provided to immigrants, to limit delays in the issuance of renewal of residence and work permits and reduce related administrative costs. The Committee takes note of the progress accomplished.

Taking into account the above mentioned information, the Committee considers that existing formalities to obtain residence and work permit in Greece have been simplified. Therefore, the Committee holds that the situation is in conformity with the Charter.

### ***Chancery dues and other charges***

In its last conclusion, the Committee found the situation of Greece not in conformity on the ground that the fees charged for issuing long term residence and work permits were excessive. With this regard, the report indicates that these fees are collected for the State and significant percentage of the collected revenues is spent on coverage of the operating costs of the departments serving third country nationals, as well as for the expenses of the ministries and decentralized administrations of the country, competent for migration policy issues. In addition, part of the fee revenues has been spent towards materialization of the gradual transformation of the competent Aliens and Immigration Services to "one-stop shop" services. The fees charged for issuing and renewing residence and work permits are provided for by article 132 of Law n° 4251/2014. It should be noted that the deposit fee for obtaining the long-term residence status has been further reduced from 600 euros to the amount of 500 euros, as an incentive for the legally residing third-country nationals towards the acquisition of this status. The said fee is paid once and covers both the granting of the long term residence permit and its renewals. Additionally, article 7 of Law n° 4332/2015 decreased the fee required by the employer for the employment of seasonal third-country workers from 150 to 50 euros.

The Committee considers that fees charged for residence and work permits have been reduced during the reference period.

### ***Conclusion***

The Committee concludes that the situation in Greece is in conformity with Article 18§2 of the 1961 Charter.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 3 - Liberalising regulations*

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

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

In its last conclusion (Conclusion 2012), the Committee deferred its decision due to lack of information that would indicate that in the reference period a progress had been achieved with liberalising regulations governing access to the national labour market.

The Committee notes from the report provided that significant changes have been introduced with the Migration and Integration Code (Law No. 4251/2014) that provides for a comprehensive legislative migration framework focused on the legal migration of third-country nationals to Greece. The Committee notes that during the reference period progress has been achieved in liberalising regulations governing access to the national labour market by:

- reducing the types of residence permits,
- increasing the duration of the initial residence permit from one to two years and its renewal from two to three years,
- improving services provided to applicants by putting in place One-Stop Shop services, operational throughout the country;
- clarifying grounds for refusal of applications relating to public order and security.

In addition, according to the above mentioned Code, a national of other States Parties has the possibility to redeem the number of insurance days up to 20% of the number required for the renewal of residence permit for employment, in case he has completed a lower number of daily wages. This also applies in cases of renewal of a residence permit.

The Committee refers to its conclusion on Article 18§1 concerning the number of work permits granted and refused to nationals of non-EEA States. On the basis of the statistics provided, the Committee observes that the percentage of work permit applications from nationals of non-EEA States Parties to the Charter which are accepted is high and that the proportion of refusals is low, which clearly shows that the existing regulations have been applied in a spirit of liberality. In this respect the Committee notes from the report that applications are refused for reasons related to public order and security.

With regard to the recognition of foreign certificates, professional qualifications and diplomas, with a view to facilitating the access to national labour market, the Committee notes that the public-law organisation, DOATAP, is an organization supervised by the Hellenic Ministry of Education, responsible for the recognition of university or technological degrees that are awarded by foreign Higher Education Institutions. The Committee asks for information on measures taken to liberalise regulations governing the recognition of foreign certifications, professional qualifications and diplomas, necessary to engage in a gainful occupation as employees or self-employed workers. In this respect, it asks for information on the number of recognition of foreign certificates, professional qualifications and diplomas issued to non-EEA nationals during the reference period.

### ***Consequences of loss of employment***

The Committee notes that there have been no changes to the situation which it has previously considered to be in conformity with the Charter. In the event of dismissal or termination of an employment contract during the validity period of a work permit, the worker concerned is entitled to remain on Greek territory until the expiry of his work permit in order to seek employment and apply for the renewal of his residence permit, provided that he meets the required conditions.

*Conclusion*

The Committee concludes that the situation in Greece is in conformity with Article 18§3 of the 1961 Charter.

**Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

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

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

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

*Conclusion*

The Committee concludes that the situation in Greece is in conformity with Article 18§4 of the 1961 Charter.



## **Article 1 of the 1988 Additional Protocol - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex**

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

### ***Equal rights***

The Committee recalls that measures relating to pregnancy, childbirth and the postnatal period are examined under Article 8 of the 1961 Charter.

The Committee examined the legal framework in its previous conclusion (Conclusions XX-1 (2012)). It noted that the Law no. 3896/2010 on “Implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation” (“Gender Equality Law”) completed the transposition of the Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 into the Greek legal order and codified in a single instrument the legislation adopted in matters relating to gender equality.

Section 3 of the Law 3896/2010 prohibits explicitly any kind of direct and indirect discrimination on grounds of sex and, particularly, in relation to family status. Law 3896/2010 defines direct and indirect discrimination and provides that men and women are entitled to equal pay for the same work or for work of equal value. In addition, Section 4 of the same law provides that where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex. The role of the Ombudsman has been extended to not only monitor implementation of the legislation but as well now to promote equal opportunities.

As regards the monitoring of the implementation of the legislation, the Labour Inspectorate monitors the implementation of the principle of equal opportunities and equal treatment between men and women in the field of employment and occupation and, in particular, Law 3896/2010, as well as the compliance with the provisions on protection of maternity and reconciliation of the professional, family and private life. The report indicates that a special chapter of the Annual Report published by the Labour Inspectorate refers to the implementation and promotion of equal treatment in employment. The report provides data regarding the parental leaves granted during the reference period.

The Committee noted previously that persons who believe that they have been discriminated may take their case to the courts and that there are no limits to the amount of compensation that may be awarded should the court find a violation (Conclusions XX-1 (2012)). It asks the next report cases of gender discrimination including complaints dealing violation of the equal pay provisions of Law 3896/2010 dealt with by the Courts, the Labour Inspectorates or the Ombudsman, with indications regarding their outcomes, sanctions applied against the employers and compensation granted to employees.

As regards equal pay for work of equal value the Committee previously asked whether it is possible to make pay comparisons across enterprises (Conclusions XX-1 (2012)).

The Committee recalls that it examines the right to equal pay under Article 1 of the 1988 Additional Protocol and Article 4§3 of the 1961 Charter, and does so therefore every two years (under thematic group 1 “Employment, training and equal opportunities”, and thematic group 3 “Labour rights”). The Committee recalls that equal treatment between women and men includes the issue of equal pay for work of equal value. Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful, this comparison can only be made across companies/undertakings. Therefore, the Committee requires that it be possible to make pay comparisons across companies. It notes that at the very least, legislation should require pay comparisons across companies in one or more of the following situations:

- cases in which statutory rules apply to the working and pay conditions in more than one company;
- cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;
- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding (company) or conglomerate (Conclusions XX-1 (2012), Statement of Interpretation on Article 1 of the 1988 Additional Protocol).

The Committee recalls that in equal pay litigation cases the legislation should allow pay comparisons across companies only where the differences in pay can be attributed to a single source. For example, the Committee has considered that the situation complied with this principle when in equal pay cases comparison can be made with a typical worker (someone in a comparable job) in another company, provided the differences in pay can be attributed to a single source (Conclusions 2012, Netherlands, Article 20) or when pay comparison is possible for employees working in a unit composed of persons who are in legally different situations if the remuneration is fixed by a collective agreement applicable to all entities of the unit (Conclusions 2014, France, Article 4§3).

In the light of all the above, the Committee reiterates its question whether in Greece in equal pay litigation cases it is possible to make comparisons of pay and jobs outside the company directly concerned.

### ***Equal opportunities***

The report indicates that the position of women in the Greek labour market is less favourable than that of men. The difference between the employment rate of men (aged 20 – 64) and the employment rate of women (aged 20 – 64), although it has declined in recent years, remains high (18,3 percentage points in 2014). The difference between the unemployment rate of men and women observed for the age group 15 – 24 stood in 2014 at 10,7 percentage points.

The report indicates that according to the Hellenic Statistical Authority, the gender pay gap stood at 15% in 2010 and updates will be published in 2016. The Committee wishes to receive updated information on the gender pay gap and measures taken to reduce it.

The Committee takes note from the report of the information on the measures and programmes developed in order to combat women's unemployment and to promote gender equality in employment such as:

- Programme Reconciling work and family life 2014-2015 in the framework of European Employment Strategy "Europe 2020";
- Special two- year programme to promote employment by subsidizing social security contributions to hire 25,000 employed persons;
- Support of Women Employment through Reinforcing of Entrepreneurship;
- 2013-2014 Progress Programme – Positive Actions for Women to promote them to the Economic decision – making centres;
- Programme Integration of the gender perspective in municipalities, focusing on women belonging to vulnerable social groups (migrants, refugees, Roma, elderly living alone and women with disabilities) which was designed and implemented by General Secretariat for Gender Equality in 2012 in eight municipalities;
- Promoting women in decision – making centres of the social partners.

The Committee previously asked to be informed of the outcomes of the National Programme for Substantive Gender Equality 2010-2013 which was designed to promote women's employment and their economic independence. The report indicates that the programme has been extended until the end of 2015 and its implementation has not yet been assessed. The new government will proceed with the assessment and the design of new gender equality policies for the next programming period 2014-2020 and a Committee has been set up to

prepare the new action plan on gender equality. The Committee wishes to be kept informed in relation to the results/outcomes and any developments of the National Programme.

The Committee notes, however, that according to the Report 2012 of the Office of the Ombudsman, the economic crisis has reinforced gender stereotypes, which in turn tend to produce gender based exclusion. The Committee further notes that the United Nations independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights indicated that the crisis had a disproportionate impact on women who were the most affected by unemployment and part-time work (A/HRC/25/50/Add.1, 27 March 2014, paragraphs 46 and 72–74) (ILO-CEACR, Direct Request (CEACR) – adopted 2014, published 104th ILC session (2015), Discrimination (Employment and Occupation Convention, 1958 (No. 111)).

The Committee asks the next report to provide updated information on the concrete measures and activities taken to promote gender equality, including equal pay for work of equal value, to overcome the effects of the economic crisis on the employment situation of women and to reduce the gender pay gap, as well as information on the results achieved.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Greece is in conformity with Article 1 of the 1988 Additional Protocol.



January 2017

## **1961 European Social Charter**

European Committee of Social Rights

Conclusions XXI-1 (2016)

**ICELAND**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the 1961 European Social Charter (the 1961 Charter) and the 1988 Additional Protocol (the Additional Protocol). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure

The following chapter concerns Iceland which ratified the 1961 Charter on 15 January 1976. The deadline for submitting the 29th report was 31 October 2015 and Iceland submitted it on 22 September 2016.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of the thematic group "Employment, training and equal opportunities":

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

Iceland has accepted all provisions from the above-mentioned group except Articles 9, 10 and Article 1 of the 1988 Additional Protocol.

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

The conclusions relating to Iceland concern 10 situations and are as follows:

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

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

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 4 of the Additional Protocol).

The deadline for submitting that report was 31 October 2016.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

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

### *Paragraph 1 - Policy of full employment*

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

### ***Employment situation***

According to Eurostat, the GDP growth rate stabilised during the reference period at relatively high level. It was 2% in 2011, 1.2% in 2012, 3.9% in 2014 and 1.8% in 2014.

In 2011, the overall employment rate stood at 78.5% and at 81.5% in 2014. This rate was well above the EU 28 employment rate which stood at 64.9% in 2014.

The male employment rate stood at 80.0% in 2009 and at 84.0% in 2014. This rate was significantly above the EU 28 rate of 70.1%. The female employment stood at 76.5% in 2009 and at 79.3% in 2014. This rate was also well above the EU 28 rate of 59.9%.

The unemployment rate stood at 7.6% in 2011 and at 4.6% in 2014. This rate was well below the EU 28 rate of 10.2%.

The youth unemployment rate decreased considerably during the reference period, namely from 14.6% in 2011 to 9.2% in 2014. The long term unemployment rate (as a percentage of active population aged 15-74) also dropped sharply from 1.7% in 2011 to 0.6% in 2014.

The Committee notes from the statistical information given above, that Iceland recovered well from the recession which followed the financial crisis of 2008 and the related collapse of its main banks.

### ***Employment policy***

The labour market measures in Iceland were governed by the same legislation as prescribed in the previous report, namely the Labour Market Measures Act No 55 from 2006. The main goal of this legislation was the continued assessment of job-seekers' competence and the structure of remedial measures designed to enhance job-seekers' capacity for work and thus to return to the labour market as soon as possible.

The legislation was complemented by a number of campaigns such as the YOUTH IN ACTION or the DARE – Knowledge and Experience projects. The YOUTH IN ACTION project aimed at minimising the effects of long-term unemployment for the youth whereas the DARE had the same objective for older workers.

In Conclusions XX-1 of 2012, the Committee asked for the overall activation rate. In its reply, Iceland gave the information that the proportion of those registered as unemployed and who participated in labour-market measures attained the range of 33 to 39%.

Another question in the last Conclusions was the issue that measures should be targeted, effective and regularly monitored. In its reply, Iceland confirmed that its labour-market measures are systematically 'targeted, effective and regularly monitored'. However, qualitative evaluation of individual courses would be carried out based on interviews which counsellors take with job-seekers and the information revealed there about job-seekers' participation in the remedial measures.

### ***Conclusion***

The Committee concludes that the situation in Iceland is in conformity with Article 1§1 of the 1961 Charter.

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

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

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

### **1. Prohibition of discrimination in employment**

The Committee previously found that the situation was not in conformity with the 1961 Charter in this respect on the grounds that the legislation prohibiting discrimination in employment on grounds other than sex was inadequate and access for nationals of states parties, non-EU/EEA nationals, to the profession of pharmacists was restricted during the reference period.

The report indicates that as regards legislation prohibiting discrimination in employment on grounds other than sex, there was no change to the situation in 2011-2014 as compared with the situation described in the previous report as the Ministry of Welfare was still working, in co-operation with the social partners, on two bills to give effect to Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. The Committee repeats its request to be informed about any development on this issue and reiterates its finding that the situation is not in conformity with the 1961 Charter.

As regards restrictions on access to the profession of pharmacist, the Committee noted in its previous conclusions that a new Act No. 34/2012 on Healthcare Workers, in force since 1 January 2013, had replaced the Pharmacists Act No. 35/1978. Since this new law does not require pharmacists to be Icelandic nationals, the situation is now in conformity with the 1961 Charter in this respect.

As regards the prohibition of discrimination based on sex, the Committee notes that there have been improvements in the implementation of legislative and institutional measures adopted to ensure that women and men have equal status and rights. It notes in particular the decisions handed down by the Supreme Court in equality cases, the narrowing of the gender pay gap (16.3% in 2008 compared with 7.6% on average during the reference period) on the labour market as a whole and the signing on 27 May 2014 by the Icelandic Government of a declaration of intent to comply with the UN Global Compact and UN Women Empowerment Principles (WEP).

The Committee notes from the report that under Article 20 of the Constitution, only persons who hold Icelandic citizenship may be appointed to public office. The report states that under the terms of the Civil Servants' Rights and Obligations Act No. 70/1996, only Icelandic nationals and citizens of other EEA Member States or Member States of the European Free Trade Association (EFTA), or the Faroe Islands may be appointed or recruited to civil service posts, but that exceptions may be made for other foreign nationals in special circumstances. The Committee previously asked on what grounds exceptions were permitted and how many exceptions had in fact been made. In reply, the report states that neither in the Civil Servants' Rights and Obligations Act nor in the relevant commentary is there any explanation of the type of circumstances that may be considered as special circumstances for the purposes of item 4 of Section 6 of the Act. The competent bodies thus have some room for interpretation when filling civil service posts. According to the report, this provision might be expected to apply when an applicant for a position who is neither an Icelandic citizen nor a citizen of another EEA Member State, EFTA Member State or the Faroe Islands is better qualified for the position than other applicants. According to information provided by the Personnel Policy Department of the Ministry of Finance and Economic Affairs, in total 318 persons from 42 countries were on the payroll of the Icelandic state in the period 2011-2014.



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

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

The Committee notes from the report that work of prisoners is governed by the Execution of Sentences Act No. 49/2005 and the Regulation on the Execution of Sentences No. 961/2005 which it examined in its Conclusions XIX-1/2008. The report further states that under Section 47 of the Execution of Sentences Act, the Prisons and Probation Agency may grant a prisoner who is serving a sentence permission to dwell outside the prison in order to pursue studies, employment or vocational training if this is considered appropriate from a resocialisation perspective or in order to prepare the prisoner for when his prison term ends.

Again with reference to its Statement of Interpretation on Article 1§2 with regard to prison work (Conclusions XX-1/2012), the Committee asks for up-to-date information in the next report on prisoners' social protection (covering employment injury, unemployment, health care and old age pensions). It underlines that if the necessary information is not provided in the next report, there will be nothing to show that the situation is in conformity with Article 1§2 of the 1961 Charter as regards work of prisoners.

### ***Domestic work***

The Committee notes from the report that Act No 46/1980, on Working Environment, Health and Safety in Workplaces, applies to all activities in which one or more persons work, irrespective of whether they are company owners or employees, except for maritime transport and aviation. Chapter IX of the Act deals with rest time, holidays and maximum working hours of workers in family undertakings. The Administration of Occupational Safety and Health monitors the application of the Act. Under Section 58, employers are obliged to provide the administration with all information necessary in connection with monitoring compliance with the Act regarding working hours. Under Section 82 of the Act, the Administration is required to monitor to ensure that employers take steps to ensure good working conditions, including hygienic practices and safety. Staff of the Administration are required to make inspection visits to companies. In the event of infringements of the Act, or failure to comply with decisions taken by the Administration, per diem fines may be imposed, except where more severe punishment is prescribed in other statutes. The Administration may also order operations to be suspended or closed down if they pose a particular risk to the lives or health of employees or other persons. Minimum wages in Iceland, including those paid in family undertakings, are determined in collective agreements under the Employees' Wages and Terms and Obligatory Pension Rights Insurance Act No. 55/1980.

The report states that the same Act applies to work done by domestic workers in private homes, enabling the Administration to make inspection visits to individuals' homes. Staff of the Administration may call on the police for assistance where necessary.

Forced labour is prohibited under the General Penal Code (Act No. 19/1940).

The Committee notes that it is a basic principle of Icelandic Contract Law that oral agreements have the same binding force as written agreements, including in the case of employment contracts. All hires, however, must be confirmed in writing under Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship. This Directive has been incorporated into Iceland's domestic legislation through collective agreements. In the event of a dispute as to whether an employment contract has been concluded, the Icelandic Supreme Court has repeatedly established that the employer generally bears the burden of proof. Regarding foreign domestic workers who wish to change employers in the event of abuse, such persons may be granted residence permits as victims of human trafficking under the Foreign Nationals Act No. 96/2002. Citizens of EEA Member States, however, may continue to reside in Iceland and, for example, make use of the services of the Directorate of Labour in finding new employment in Iceland.

The Committee asks that the next report provide information on the rules and procedures for granting residence permits to migrant domestic workers who are victims of abuse and who are not EEA nationals, along with information on the scale of this phenomenon.

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

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

The Committee notes from the report that Section 14 of the Unemployment Insurance Act No. 54/2006 seeks to guarantee persons who lose their employment temporary financial assistance for up to 36 months provided that they are actively seeking work during this time. Any refusal to accept a job offer must be duly justified. In particular, under Section 57 of the Act, persons in receipt of unemployment benefit may not refuse a job offer after the first four weeks from the time when the Directorate of Labour received their application. They have four weeks within which to find a preferred job. Claimants are not entitled to receive benefits until 40 days, for which they would otherwise have received benefit payments, have elapsed from the date on which they are notified of a decision by the Directorate of Labour to impose a penalty. When deciding whether to impose a penalty, the Directorate of Labour is required to take account of any social and/or personal circumstances that may have led the person to refuse a job offer or to resign from a position without having another job lined up. In addition, the Directorate must take account of general rules and relevant considerations when deciding whether applicants for unemployment benefit are to be subject to a waiting period before receiving benefits. Appeals may be lodged with the Welfare Appeals Committee against decisions taken by the Directorate of Labour on the basis of the Unemployment Insurance Act. The committee's rulings are final at the administrative level and no appeal may be lodged against them with a higher executive authority. Disputes concerning rights and obligations under the Unemployment Insurance Act may be brought before the courts, however.

#### ***Privacy and work***

The report refers to the information provided in the last evaluation cycle, and explains that Regulation No. 837/2006 on electronic surveillance has been amended by Regulation No. 475/2011 under which the following additions have been made: ban preventing employers from checking employees' emails and requirement to set up, for at least two weeks, an automatic reply from the employee's electronic mailbox, indicating that the employee has left the employer's service.

The Committee takes note of the information provided on electronic surveillance and employees' personal data protection. It points out that the emergence of new technologies has made it possible for employees to work for their employers at all times and in all places, including at home, with the result that there is no longer a clear dividing line between work and private life. There is therefore an increased risk of work encroaching on employees' private lives, including outside working hours and the workplace. The Committee considers that the right to earn one's living in an occupation freely entered upon includes the right to be protected against such interference. Again with reference to its Statement of Interpretation on Article 1§2 (Conclusions XIX-1/2012), it asks for up-to-date information on this point in the next report.

#### ***Conclusion***

The Committee concludes that the situation in Iceland is not in conformity with Article 1§2 of the 1961 Charter on the ground that that the legislation prohibiting discrimination in employment on grounds other than sex is inadequate.

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

### *Paragraph 3 - Free placement services*

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

The report points out that no amendments were made to the Labour Market Measures Act, No 55/2006, during the reference period. It specifies that under the Unemployment Insurance Act, No. 54/2006, an application for unemployment benefit includes registration in the Directorate of Labour's labour-exchange system and a request for the assistance of a counsellor of the directorate in seeking employment.

The Directorate of Labour's regional service offices maintain labour-exchange services all over the country which are open to job-seekers irrespective of whether or not they are registered with the directorate as being unemployed, and to employers. Employment counsellors assist companies in the staff engagement process and give job-seekers guidance and advice on looking for employment. The report also indicates that the labour exchange service handles the structure of labour market measures in collaboration with the organisations of the social partners and the local authorities, and that this arrangement proved to be successful.

According to the report, the total number of those who registered with the public regional labour-exchanges was as follow: 26,855 in 2011; 22,828 in 2012; 19,310 in 2013 and 16,862 in 2014. In 2011, a total of 3,001 vacancies were reported to the public labour exchanges; the figure was 2,522 in 2012, 2,543 in 2013, 2,837 in 2014. The number of placements in the private sector which took place through the public labour exchanges was 815 in 2011, 495 in 2012, 370 in 2013 and 446 in 2014. The Committee asks that the next report specify the placement rate (i.e. percentage of placements compared to the number of notified vacancies).

In reply to Committee's request, the report indicates that the Labour Market Measures Act provides for private labour exchanges. On this basis, enterprises, individuals and non-governmental organisations may act as intermediaries, providing that this is done at the employer's expense. No special supervision is maintained over the activities of private labour exchanges; however, in case of violation of relevant legal provisions, courts can sanction infringements by fines.

### *Conclusion*

The Committee concludes that the situation in Iceland is in conformity with Article 1§3 of the 1961 Charter.

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

### *Paragraph 4 - Vocational guidance, training and rehabilitation*

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

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

As Iceland has not accepted Articles 9 and 10§3, the Committee assesses under Article 1§4 the conformity of the situation relating to the right of adult workers to vocational guidance and training.

### **Equal treatment**

The Committee previously noted (Conclusions XVIII-2 (2007)) that nationals of other states party living and working lawfully in Iceland are guaranteed equal access to the various training courses and programmes. It asks the next report to clarify whether this also applies to vocational guidance services and what is the legal basis ensuring equal treatment.

### **Vocational guidance**

The Committee takes note of the information provided in the report in response to its request for information on vocational guidance services provided respectively in the education system and in the labour market (Conclusions XX-1 (2012)).

In the education system, pursuant to Section 13 of the Compulsory Schools Act, No. 91/2008, and Section 37 of the Upper Secondary Education Act, No. 92/2008, free vocational guidance is provided to pupils by professional counsellors. The qualifications required to be a counsellor are set by the law and their number in each school varies between 1 and 5. The Committee notes that, although a survey carried out in October 2014 revealed some shortcomings in the effective access of pupils to educational and vocational counselling, notably in Junior schools, the authorities took measures in order to strengthen the implementation of the law for the future. Furthermore, the report indicates that a task force was set up in 2014 with a view to making proposals on future vision, policy and measures regarding educational and vocational counselling in Iceland. The Committee asks the next report to provide information on the follow-up given to these initiatives.

Under Section 8 of the Adult Education Act, No. 27/2010, vocational guidance is also provided free of charge to adults in the education system by the Education and Training Service Centre and the lifelong learning centres (during the reference period, such guidance was provided by 24-28 counsellors). Between 2011 and 2014, the number of counselling interviews given by educational and vocation counsellors was of the order of 10-11 thousand each year. The Education and Training Fund provides funding for educational and vocational counselling as part of the adult education system. The Committee notes that the funding that has been allocated to counselling during the reference period decreased from ISK 147 801 084 in 2011 (€927 896) to ISK 132 928 326 in 2014 (€857 911), and that the number of educational and vocational counselling sessions passed from 10 868 in 2011 to 9 467 in 2014. It asks the next report to explain the reasons of this decrease.

In the labour market, vocational guidance is provided free of charge to all job-seekers by the Directorate of Labour, pursuant to the Labour Market Measures Act, No. 55/2006. The Committee takes note of the services provided, as described in the report, and notes that the number of counsellors passed from 45.97 in 2011 to 36.83 in 2014; the funding passed from ISK 21 267 606 in 2011 (€133 518) to ISK 19 359 763 in 2014 (€124 947); the number of beneficiaries decreased from 13 067 in 2011 to 6 675 in 2014; and the ratio of job-seekers

per counsellor went from 283 in 2011 to 181 in 2014. The Committee asks the next report to indicate whether the offer of vocational services is adequate to the demand and to clarify whether vocational guidance is available not only to job-seekers but also to workers in activity wishing, for example, to change job or to undertake further training.

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

In its previous conclusion (Conclusions XX-1 (2012)), the Committee took note of the Adult Education Act No. 27/2010, which deals with the organisation of adult education by accredited education and training providers and lays the foundation for a comprehensive system of lifelong learning. In response to the Committee's request for further information, the authorities explain in the report that training for adults is available, since 1972, in the upper secondary divisions of schools, through distance learning programmes run by universities and through the 11 state funded lifelong learning centres spread all over the country, which offer distance learning programmes in collaboration with the universities and courses of adult education of many types (including Icelandic language for foreigners). On 29 November 2011, the Ministry of Education, Science and Culture issued Regulation No. 1163/2011, which makes further provisions covering various aspects of adult education, e.g. regarding the accreditation of education providers, the certification of syllabuses and real competence evaluation.

The report refers in particular to the Education and Training Service Centre, set up to promote adult education and vocational training in cooperation with other educational institutions. The Committee takes note of the detailed information provided on the centre's activities, which were further developed during the reference period. It also takes note of the information provided, in response to the Committee's request (Conclusions XX-1 (2012)) concerning the types of training provided. According to the report, at the end of 2014, fourteen entities had been certified as education-providers in collaboration with the Education and Training Service Centre and the Education Fund, of which 10 were traditional lifelong learning centres. From 2009 to 2013, 1 829 people benefited from evaluations of their real competence (validation of prior learning) and 13 398 took courses of various types. In 2012, a project was also started, which involved the development of real competence evaluation (validation of prior learning) and of a web portal (Myschool) on education and work. The number of courses provided in the framework of this project kept rising during the reference period, as well as the number of participants, according to the report: in 2011, 2 486 people (65% women and 35% men) participated in a total of 203 accredited courses held by the Education and Training Service Centre in various parts of Iceland; in 2014, the number of participants was 2 804 (67% women, 33% men) and the accredited courses were 227 in total. The Committee takes also note of the information provided in the report concerning the increase of the budget for adult education during the reference period. It also notes that the number of students on courses paid for by the Education Fund rose each year from 2010 to 2012, falling slightly between 2012 and 2013. As regards the students following continuing education courses at the University of Iceland, their number was 7 521 in 2011, 6 730 in 2012, 7 291 in 2013 and 7 202 in 2014.

The Committee takes note of the information provided and asks the next report to provide updated information on these issues and to clarify whether continuing vocational training is available both to adult jobseekers and people already working.

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

As regards measures related to vocational guidance and training of persons with disabilities, the Committee refers to its assessment under Article 15§1 (Conclusions 2016), in which it considers that the situation is not in conformity with the Charter of 1961 on the ground that there is no legislation explicitly prohibiting discrimination in training on the ground of disability. Accordingly, the Committee considers that the situation is not in conformity with Article 1§4 on the same ground.

### *Conclusion*

The Committee concludes that the situation in Iceland is not in conformity with Article 1§4 of the 1961 Charter on the ground that there is no legislation explicitly prohibiting discrimination in training on the ground of disability.

## **Article 15 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement**

### *Paragraph 1 - Education and training for persons with disabilities*

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

Iceland signed on 30 March 2007 the UN Convention on rights of Persons with Disabilities and its Optional Protocol. It ratified the Convention on 23 September 2016, out of the reference period. According to the report, the Optional Protocol shall be ratified by the end of 2017.

The report indicates that the proportion of persons with disabilities continued to grow throughout the reference period. Out of the 18-66 age group, the proportion of recipients of invalidity benefits, invalidity grants and rehabilitation grants, went from 8.3% in 2011 to 8.8% in 2014. These benefits cover individuals who have invalidity ratings of at least 50%. The number of beneficiaries of disabled child care benefits went from 2 758 in 2011 to 2 713 in 2014. According to Eurostat data, the proportion of persons with disabilities was 14.7% (corresponding to some 32 000 people aged between 15 and 64) in 2012.

As regards the number of children with disabilities attending respectively mainstream and special schools, the Committee notes from Statistics Iceland (the official national statistics body) that, out of the total number of pupils in compulsory schools (42 365 in 2011, 43 136 in 2014), the number of children with disabilities with an official diagnosis in compulsory school went from 6527 in school-year 2010-2011 (476 of them were in special education classes) to 6946 in 2013-2014 (383 of whom were in special education classes). In 2013-2014, 109 pupils were attending Klettaskoli, which is the only specialised public school at the junior (compulsory) level for the whole country.

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

The report indicates that, during the reference period, a task force on the review of the Disabled Persons Act and the Local Authorities' Social Services Act worked inter alia on the definition of "disability", in the light of the definition adopted in the UN Convention on the Rights of Persons with Disabilities (UN-CRPD). The Committee asks the next report to clarify what is the current legal definition of disability.

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

In its previous conclusion, the Committee concluded that the situation in Iceland was not in conformity with Article 15§1 of the Charter on the ground that there was no legislation explicitly prohibiting discrimination in education and training on the ground of disability (see for details Conclusions XX-1 (2012)).

The report points out that, pursuant to Act No. 230/2012 on pupils with special needs in upper secondary schools, a Regulation was issued by the Minister of Education on 14 February 2012, which provides inter alia that such pupils should have "equal opportunities to pursue studies, without discrimination, to the extent possible". However, the report acknowledges that the bill which was expected to be submitted to Parliament in 2012 (see Conclusions XX-1 (2012)), has not been adopted yet. This bill aims at implementing Council Directive 2000/78/EC of 27 November 2000 and would prohibit discrimination, inter alia on grounds of disability. Although Icelandic law provides for equal rights for all citizens in general, the Committee notes that no legislation has been adopted as yet which would explicitly protect all people from discrimination on ground of disability in the field of education and training. Furthermore, no judgment was issued by the Supreme Court during the reference period on cases regarding the right to education of persons with disabilities. In light of this, the Committee holds that the situation which it previously found not to be in conformity with Article 15§1 of the 1961 Charter has not changed.

## ***Education***

The main legislation applicable in respect of education of pupils and students with special needs (Compulsory School Act No. 91/2008, regarding pupils with special needs; Regulation No. 585/2010, on pupils with special needs in junior schools; Upper Secondary Education Act, No. 92/2008) has not been amended during the reference period, apart from the issuing of Act No. 230/2012 on pupils with special needs in upper secondary schools and its implementing regulation (see above), which addresses in further detail the obligations of the upper secondary schools and the rights of pupils, needs for special support, the structure of teaching and the arrangements for educational support for pupils with special needs, courses of study for pupils with disabilities in upper-secondary schools, the registration of pupils with disabilities in vocational courses in upper-secondary schools and special services for chronically ill pupils. "Pupils with special needs" covers those who have difficulty in pursuing school studies due to particular learning difficulties, emotional or social difficulties and/or physical disabilities, pupils with reading difficulties, chronically ill pupils, pupils with developmental disorders, psychiatric disorders and others with health-related special needs.

As the Committee previously noted, most pupils receive education in a mainstream local compulsory school, most commonly in mainstream classes. However, there are also some special units within mainstream schools and there is one special school for pupils with severe disabilities. The needs of specific students are addressed on a case by case basis, at the local level, under the responsibility of municipal authorities. The Committee refers to its previous conclusion for a detailed description of the educational system in respect of persons with disabilities, and asks the next report to provide updated information on the applicable legislation, as well as on statistical data on the number of children with disabilities attending respectively mainstream schools facilities and special education institutions.

## ***Vocational training***

In addition to the adoption of the abovementioned legislation on pupils with special needs in upper secondary schools, the report refers to the amendment, in 2012, of the Higher Education Act No. 63/2006, whereby universities have now to provide students with disabilities, and students with emotional or social difficulties, with teaching and special support during their studies. Specialist assistance and the appropriate facilities are to be provided as necessary. Students with disabilities are to pursue studies side by side with other students to the extent possible. Universities are moreover to strive to provide special support students with special learning difficulties or illnesses. The Committee recalls that to have a comprehensive picture of the situation and assess its conformity under Article 15§1 of the Charter, it needs to be systematically provided with data on the number of persons with disabilities attending respectively mainstream or special training facilities. It asks the next report to provide such data, as well as information on the different forms of training opportunities available to persons with disabilities.

## ***Conclusion***

The Committee concludes that the situation in Iceland is not in conformity with Article 15§1 of the 1961 Charter on the ground that there is no legislation explicitly prohibiting discrimination in education and training on the ground of disability.



## **Article 15 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement**

### *Paragraph 2 - Employment of persons with disabilities*

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

### ***Employment of persons with disabilities***

According to the report, the proportion of recipients of disability benefits and rehabilitation grants continued to rise slightly between 2011 and 2014: in 2011, they were 8.3% (17,091 people) of the population aged 18-66 years and in 2014 they were 8.8% (18,614 people). In particular, the number of people with disability level of 75% or more increased from 15,197 in 2011 to 16,323 in 2014 (+7.4%); the number of people with disability level between 50 and 74% decreased from 770 in 2011 to 692 in 2014 (-10%); the number of people getting rehabilitation grants increased from 1124 in 2011 to 1599 in 2014 (+42.2%). In the same period (2011-2014), the public expense for people with disabilities (pensions insurance and benefits under the Social Assistance Act) increased by 29%. The persons with disabilities receiving no disability benefits on account of their employment-related earnings were 864 in 2011, 937 in 2012, 694 in 2013 and 745 in 2014. The Committee notes from the ANED shadow report on Iceland – European Semester 2015/2016 that the employment rate in Iceland for persons aged between 20 and 64 was estimated to be respectively 65.7% and 37.3% for persons with moderate and severe disabilities, against an employment rate of 80.6% for non-disabled people. It notes however from the same source that, as the beneficiaries of disability benefits are not eligible to unemployment benefits, there are no reliable data on the number of people with disabilities actively participating in the labour market.

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

The Committee has previously found that the situation in Iceland was not in conformity with the 1961 Charter on the ground that there was no legislation explicitly prohibiting discrimination in employment on the ground of disability (Conclusions XX-1 (2012), XIX-1 (2008), XVIII-2 (2007)). It notes from the report that this situation has not changed and that no obligation to ensure reasonable accommodation in the workplace applied during the reference period. A bill on equal treatment in employment, including a provision on reasonable accommodation, was presented in 2014 but was not adopted. The Committee asks the next report to provide updated information on any relevant development in this field. It maintains in the meantime its finding that the situation is not in conformity with Article 15§2 of the 1961 Charter.

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

The report indicates that the competence on employment of people with disabilities was transferred as from 2011 to the local authorities, while the Directorate of Labour was in charge of centralising the treatment of both employment-related and rehabilitation-related issues. The new structure of employment issues for people with disabilities was to be defined by a specially appointed committee, which failed however to find an agreement during the reference period. The Committee notes that in 2015, out of the reference period, the repartition of competences between central and local government was being reassessed by a steering committee; it asks the next report to provide updated information in this respect.

The Committee takes note of the measures taken during the reference period:

- the *Employment with Support (AMS)* programme, which was aimed at assisting people with disabilities in getting training in ordinary workplaces – 270 people with disabilities took part to this programme in 2011, 221 in 2012, 291 in 2013 and 330 in 2014; they worked in different types of employment such as nursery

- schools, libraries, physical fitness centres, canteens, computer companies, sports clubs, offices, production companies and shops;
- the *Harnessing Abilities – All Abilities* project, launched in November 2014 by the Directorate of Labour, the Organisation of the Disabled in Iceland and the National Association of People with Intellectual Disabilities. This project is aimed at creating jobs for job-seekers with reduced working capacity, who do not receive substantial income apart from payments from the Social Insurance Administration. The project is coordinated by the Directorate of Labour, which is entitled to enter into agreements with private employers. Those who accept to employ people with disabilities receive incentives, namely up to 75% reimbursement of the person's wages and wage-related expenses for two years, falling by 10% per year until a level of 25% reimbursement is reached. This 25% reimbursement is then maintained indefinitely. The working agreements may concern part-time jobs, with 20% set as the minimum, or full-time jobs, under the same terms as defined by the applicable collective agreements, including as regards wages, definition of tasks etc.;
  - the rehabilitation activities carried out by the Icelandic Rehabilitation Fund (VIRK), particularly after the entry into force of the Act on Vocational Rehabilitation and the Operation of Vocational Rehabilitation Funds, No. 60/2012. From the setting up of VIRK in 2009 to end 2014, 7642 individuals have sought its services to reintegrate the labour market. The number of individuals involved for the first time increased from 1304 in 2011 to 1782 in 2014. Out of the 3765 individuals who had benefited from VIRK services by the end of 2014, about 72% were either in paid employment or actively seeking employment, or were pursuing studies that qualified for student loans at the time of completion.

The Disabled People Act No. 59/1992, which provides inter alia for sheltered employment, did not change during the reference period. The Committee asks the next report to provide updated information as to whether sheltered employment facilities still operate and how many people with disabilities work there.

#### *Conclusion*

The Committee concludes that the situation in Iceland is not in conformity with Article 15§2 of the 1961 Charter on the ground that there is no legislation explicitly prohibiting discrimination in employment on the ground of disability.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 1 - Applying existing regulations in a spirit of liberality*

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

It notes that all EEA citizens, as well as their family members, have free access to the labour market. During the reference period, a work permit was required for the nationals of the following states parties to the Social Charter: Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria (until 1 January 2012), Croatia, Georgia, Republic of Moldova, Montenegro, Romania (until 1 January 2012), Russian Federation, Serbia, "The former Yugoslav Republic of Macedonia", Turkey and Ukraine.

### **Work permits**

The principal items of legislation with a bearing on immigration are the Foreign Nationals Act, No. 96/2002 (as amended in 2012 and 2014 to implement some EU directives) and Regulation No. 53/2003 on foreign nationals, the Foreign Nationals' Employment Rights Act, No. 97/2002, the Icelandic Nationality Act, No. 100/1952, the Act on the Schengen Information System in Iceland, 16/2000 and the Administrative Procedure Act, No. 37/1993. As from 2014, a Foreign Nationals' Appeal Committee is in charge of reviewing administrative decisions by the Immigration Agency. Moreover, all administrative decisions may be referred to the courts.

The Foreign Nationals' Right of Employment Act provides for the following types of temporary work permits:

- Temporary work permits for jobs which demand specialist skills;
- Temporary work permits due to a shortage of domestic workers;
- Temporary work permits for sportsmen;
- Temporary work permits in view of special circumstances;
- Temporary work permits on grounds of unification of families;
- Temporary work permits for specialist workers on the basis of a service contract;
- Temporary work permits covering work done by foreign nationals who are studying in Iceland (student's work permit).

The Committee asks whether the abovementioned types of permit apply both to employed and self-employed workers or whether the latter require a specific work permit. It also asks the next report to clarify the maximum length of each type of temporary work permit.

### **Relevant statistics**

According to the report, the number of foreign residents raised from 21 143 in 2011, representing about 6.6% of Iceland's population, to 22 744 in 2014, or 7% of the population. 84% of the foreign residents in Iceland were from Europe, in particular from Poland (10 172 persons in 2014). The ratio of foreign nationals on the Icelandic labour market laid in the range of 8.2% – 8.9% during the reference period, that is from 14 796 foreign workers in 2011 (including 6198 Polish workers) to 16 558 in 2014 (including 7 157 Polish workers).

The Committee takes note of the data provided in the report on the number of the different types of permits which were granted. It notes that, between 2011 and 2014, there was in Iceland a significant decrease in the granting of permanent work permits (-36,5%), of extensions of temporary permits (-21,5%) and of specialised work permits (-91%). However, notwithstanding some fluctuations over the reference period, the number of temporary permits granted increased (by almost 12%), and so did the number of student workers permits, which more than doubled (+103%). The Committee asks that the next report provide updated data, as well as a more detailed explanation of the trends observed, in particular as regards any decrease in the number of permits granted.

The Committee notes that, during the reference period, the number of immigrants and foreign workers continued to increase, despite a decrease by 10% in the number of permits granted or renewed. In this respect, it notes from the report that the number of new or renewed work permits granted to nationals from non-EEA European countries, USA, Canada and Asia decreased by almost 16%, while the number of new or renewed work permits granted to nationals of other parts of the world increased by almost 34% in the same period. However, this information does not answer the Committee's request to specify the number of permits (first permits and renewals) granted or refused, against the number of applications, concerning specifically nationals of non-EEA States Parties to the Charter. The Committee accordingly reiterates its request and reserves in the meantime its position on this point.

*Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Iceland is in conformity with Article 18§1 of the 1961 Charter.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 2 - Simplifying existing formalities and reducing dues and taxes*

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

### ***Administrative formalities and time frames for obtaining the documents needed for engaging in a professional occupation***

The Committee refers to its conclusion under Article 18§1 as regards the relevant legislation and types of temporary work permits available. It previously noted (Conclusions XX-1 (2012)) that, in Iceland, applications for residence and work permits could not be processed through a single procedure and considered that this situation was not in conformity with Article 18§2 of the 1961 Charter.

The report confirms that this situation has not changed: under the Foreign Nationals Act, as amended, and Regulation No. 53/2003 on foreign nationals, as amended, the Directorate of Labour can issue work permits only after the Immigration Agency has issued a residence permit. Furthermore, the general rule is that applications for a first-time residence permit must be approved before the applicant comes to Iceland. Applicants who are in Iceland when applying for a residence permit for the first time must leave the country before their applications are accepted for examination. Exceptions may be made in exceptional cases, e.g. in connection with the uniting of family members or if there are cogent considerations of fairness for doing so. The processing time for a residence permit may be up to 90 days from the day on which all requisite documents have been submitted. When the Immigration Agency has confirmed that the basic requirements for the issue of a residence permit are met, the application is forwarded to the Directorate of Labour. In conformity with the Foreign Nationals' Right of Employment Act, No. 97/2002 and Regulation No. 339/2005 on foreign nationals' right of employment, the Directorate of Labour assesses whether the work to be done by the applicant meets the requirements set in the Act and whether the applicant has the qualifications and experience demanded. After the directorate has issued a work permit, the Immigration Agency is authorised to issue a residence permit on grounds of employment. On average, the Directorate of Labour takes three weeks to process an application.

The Committee recalls that conformity with Article 18§2 presupposes the possibility of completing the formalities concerning the issuance of work and residence permits in the country of destination as well as in the country of origin and obtaining the residence and work permits at the same time and through a single application. It also implies that the documents required (residence/work permits) will be delivered within a reasonable time. As work and residence permits are still issued through two distinct procedures and foreign nationals are not allowed to file their application in Iceland, the Committee maintains that the formalities have not been simplified and that the situation remains therefore not in conformity with Article 18§2 of 1961 Charter.

The Committee asks the next report to indicate whether the same formalities apply in respect of self-employed workers. It furthermore asks what formalities apply to the renewal of work permits and what is the time-frame needed for it.

### ***Chancery dues and other charges***

In response to the Committee's question (Conclusions XX-1 (2012)), the report points out that there are no separate charges for the issuance of a work permit or the processing of an application for such a permit and that the fees related to the processing and issuance of a temporary or permanent residence permit, or to the extension of a temporary residence permit, have not changed during the reference period. Under the Additional Treasury Income Act No. 88/1991, such fees amount respectively to ISK 12 000 (about €77 at the rate of 31/12/2014) for the processing of applications for an initial temporary residence permit or a

permanent residence permit, and ISK 6000 (nearly €39) for an extension of a temporary residence permit.

*Conclusion*

The Committee concludes that the situation in Iceland is not in conformity with Article 18§2 of the 1961 Charter on the ground that the formalities for issuing work and residence permits have not been simplified.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 3 - Liberalising regulations*

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

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

The Committee refers to its conclusion under Article 18§1 as regards the relevant legislation and types of temporary work permits available.

The report states that the criteria for granting work permits covering work done by foreign nationals is determined by the government policy at any given time and that no amendments were made during the reference period to the Foreign Nationals' Right of Employment Act.

The Committee notes from the website of the Directorate of Immigration that, in order to apply for a temporary residence and work permit a foreign national must have a secure income (capability of support for at least one year in the amount of ISK 163 635 per month for an individual, or ISK 245 453 per month for a couple, that is respectively €1054 and €1584 at the rate of 31/12/2014), a health insurance for at least six months (at the minimum amount of ISK 2 000 000, that is €12 908), and secure housing. The applicant is also required to undergo a medical examination and to produce a criminal record certificate for the past five years.

The Committee asks the next report to clarify what are the specific requirements applying to the granting of work permits during the reference period, and in particular whether the access of foreign workers to the national labour market has been extended or restricted during such period. The Committee furthermore asks the next report to clarify under what conditions a foreign national from a non-EEA State party to the Charter can get access to the Icelandic labour market as self-employed worker.

The report indicates, in response to the Committee's question, that the recognition of foreign certificates, professional qualification and diplomas is provided for by Act No. 26/2010 on the Recognition of Professional Qualifications and Competence for Work in Iceland. In the framework of the implementation of the relevant EU rules (Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013), Iceland has introduced the European Professional Card for individual occupations, which is intended to facilitate mobility by employees and facilitate the recognition of professional qualifications.

As regards the number of applications for work permits submitted by nationals of non-EEA States parties to the Charter, the Committee refers to its finding, under Article 18§1, that the data provided do not allow to identify the number of permits (first permits and renewals) granted or refused, against the number of applications, concerning specifically nationals of non-EEA States Parties to the Charter. The Committee accordingly reiterates its request and considers that, if the next report does not provide information in this respect, there will be nothing to establish that the situation is in conformity with the Charter.

According to the report, applications for work permits are rejected by the Directorate of Labour mainly for the following reasons:

- Failure to demonstrate that there is a shortage of qualified workers in Iceland or in the EEA;
- The terms of engagement are not compatible with Icelandic collective agreements or Icelandic law;
- The job involved is not one that calls for expert qualifications, or the foreign applicant does not have expert qualifications;
- The company has previously been found to have foreign nationals in its service without work permits;
- The company has previously been found not paying tax deductions at source and social insurance tax in respect of work done by a foreign national;

- The company fails to comply with a request by the Directorate of Labour for further information and materials, with the result that the conditions for the issue of a work permit are not met;
- The foreign national is not in possession of the requisite operating licence, i.e. in the case of work in a regulated industrial trade, work in the health services or other positions where a licence is required according to law;
- The job proportion of a foreign national who is a student in Iceland is in excess of what is permitted (i.e. more than 40% of full-time employment) concurrent with studies.

The Committee asks the next report to provide more detailed information on the condition related to the shortage of qualified workers in the EEA, how such condition is assessed and what is the rate of refusal of applications based on this requirement, in respect of nationals of non-EEA states parties to the Charter. It recalls that should refusals always or in most cases derive from the application of rules – like the so called “priority workers” rule – would not be in conformity with Article 18§3, since the State would not comply with its obligation to liberalise regulations governing the access to national labour market with respect to nationals of non-EEA States Parties to the Charter. As the information provided in the report does not allow to assess this situation, despite the questions raised in the previous conclusions, the Committee considers that it has not been established that the existing regulations have been liberalised.

The Committee recalls that a person who has been legally resident for a given length of time on the territory of another Party should be able to enjoy the same rights as nationals of that country. The restrictions initially imposed with regard to access to employment (which can be accepted only if they are not excessive) must therefore be gradually lifted. As the report does not provide any information on this issue, the Committee asks the next report to indicate under what conditions a work permit can be renewed or changed, for instance in case of change of employer or occupation, including when the person wishes to change from employment to self-employment or the other way round. It furthermore asks under what conditions a foreign worker can obtain a permanent work permit.

### ***Consequences of loss of employment***

In response to the Committee’s question, the report indicates that, under Article 16, paragraph 1, of the Foreign Nationals Act, No. 96/2002, as amended, the Immigration Agency may revoke a foreign national’s residence permit if the person no longer meets the conditions for being granted it. In the case of a residence permit in connection with employment, the holding of a work permit is the basis on which the residence permit is granted, and the practice is that the Immigration Agency revokes the residence permit if the work permit is revoked. In such cases, the foreign national concerned should leave the country within 30 days. According to the report, however, such situations are very rare and the last occurrence was in 2013. In most cases where work permits are revoked, this is because the person concerned is changing jobs or has decided not to come to Iceland, etc.; in such cases it is not actually necessary to revoke the residence permit. When the persons involved lose their job, they nearly always succeed in finding a new one before the Immigration Agency revokes their residence permits, or else there is only a short time left before the residence permit expires in any case, so the agency does not need to intervene.

The Committee recalls that in case a work permit is revoked before the date of expiry, either because the employment contract is prematurely terminated, or because the worker no longer meets the conditions under which the work permit was granted, it would be contrary to the Charter to automatically deprive such worker of the possibility to continue to reside in the State concerned and to seek another job and a new work permit, unless there are exceptional circumstances which would authorise expulsion of the foreign worker concerned, in the meaning of Article 19§8 (i.e. where the individual concerned has been convicted of a serious criminal offence, or has been involved in activities which constitute a substantive



threat to national security, the public interest or public morality). Insofar as the legislation in Iceland allows for a residence permit to be revoked in certain cases, following the revocation of a work permit, the situation is not in conformity with Article 18§3 of the Charter.

*Conclusion*

The Committee concludes that the situation in Iceland is not in conformity with Article 18§3 of the 1961 Charter on the ground that it has not been established that the existing regulations have been liberalised.

**Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

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

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

The report indicates that there have been no changes to the situation which the Committee previously found to be in conformity with the 1961 Charter (Conclusions XX-1 (2012)).

*Conclusion*

The Committee concludes that the situation in Iceland is in conformity with Article 18§4 of the 1961 Charter.



January 2017

## **1961 European Social Charter**

European Committee of Social Rights

Conclusions XXI-1 (2016)

**SPAIN**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the 1961 European Social Charter (the 1961 Charter) and the 1988 Additional Protocol (the Additional Protocol). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

The following chapter concerns Spain which ratified the 1961 Charter on 6 June 1980. The deadline for submitting the 28th report was 31 October 2015 and Spain submitted it on 28 October 2015. Comments on the 28th report by UGT and the CIG were registered on 30 December 2015 and 30 September 2016 respectively.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of the thematic group "Employment, training and equal opportunities":

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

Spain has accepted all provisions from the above-mentioned group.

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

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

- the right to just conditions of work – elimination of risks in dangerous or unhealthy occupations (Article 2§4).

The conclusions relating to Spain concern 17 situations and are as follows:

– 9 conclusions of conformity: Articles 9, 10§2, 10§4, 15§1, 15§2, 18§2, 18§3, 18§4, Article 1 of the Additional Protocol;

– 5 conclusions of non-conformity: Articles 1§1, 1§2, 1§3, 10§1, 18§1.

In respect of the other 3 situations related to Articles 1§4 and 10§3, as well as Article 2§4, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Spain under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

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

#### **Article 10§1**

- Since 2006 when the Organic Law of Education entered into force a total of 148 vocational education qualifications have been developed of which 108 were developed during 2011-2014.

#### **Article 15**

- Royal Decree 10/2011 of 26 August 2011 on urgent measures to promote youth employment, support job stability and maintain vocational retraining programmes for those who have exhausted their unemployment benefits is aimed at improving the skills of young people.

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

- the right to safe and healthy working conditions (Article 3),

- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 4 of the Additional Protocol).

The report should also contain information requested by the Committee in Conclusions XX-4 (2015) in respect of its findings of non-conformity due to a repeated lack of information:

- the right of children and young persons to protection – fair pay (Article 7§5),
- the right of the family to social, legal and economic protection (Article 16),
- the right of migrant workers and their families to protection and assistance – assistance and information on migration (Article 19§1),
- the right of migrant workers and their families to protection and assistance – co-operation between social services of emigration and immigration states (Article 19§3),
- the right of migrant workers and their families to protection and assistance – family reunion (Article 19§6).

The deadline for submitting that report was 31 October 2016.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

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

### *Paragraph 1 - Policy of full employment*

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

### **Employment situation**

The GDP growth rate was at – 1.0% in 2011 and at – 1.7% in 2013. It rebounded to 1.4% in 2014 reaching the same level as the EU 28 average rate.

The overall employment rate decreased from 58.0% to 56.0% from 2011 to 2014. This rate is well below the EU 28 average of 64.9% (2014).

From 2009 to 2014 the male employment rate decreased from 66.5% to 60.7%. The female employment decreased during the same period from 53.3% to 51.2%. The employment rate of older workers remained practically stable (44.0% in 2009; 44.3% in 2014).

The unemployment rate increased further from 21.4% to 24.5% in 2014. This rate was considerably higher than the EU 28 average of 10.2%.

The youth unemployment increased even further during the reference period (from 46.2% in 2011 to 53.2% in 2014).

The long-term unemployment rate as a percentage of the active population aged 15 – 24 increased considerably from 8.9% in 2011 to 12.9% in 2014.

The Committee notes that Spain remained harshly hit by the consequences of the economic crisis. The economy grew again in 2014. However this growth had no impact on the employment situation yet. The burden of this difficult situation as carried particularly by young persons is worrying with an unemployment rate of 53.2% in 2014.

### **Employment policy**

In its previous Conclusion, the Committee asked for an evaluation of the impact of the comprehensive reform of the Spanish labour market undertaken in 2012.

According to the report, a key element of the reform was the priority given to collective bargaining agreements at the firm level over those at the regional level and the greater possibility given to firms to opt-out from a collective agreement and adopt internal flexibility measures to limit job destruction. In addition, the extension of collective bargaining agreements after their end date if no new agreement is reached was limited to a maximum period of one year. Dismissal regulations were also modified, redefining the conditions for fair dismissal, reducing monetary compensations in the case of unfair dismissal and eliminating the requirement of administrative authorisation in the case of collective redundancies. Moreover, a new permanent contract for full-time employees in small firms was introduced with an extended trial period of one year.

According to the report, the reform promoted the internal flexibility of firms and reduced dismissal costs for permanent workers. The reform led to a significant wage moderation which contributed to an increased hiring on permanent contracts.

The Committee notes from Eurostat that the activation rate in Spain, that is the number of persons taking part in an active measure as a percentage of the unemployed, was 23.3% in 2013, which dropped dramatically from 55.2% in 2009. The Committee asks for the reason of this important reduction given that the overall unemployment rate remained at a very high level.

Still according to Eurostat, public expenditure on active labour market policies in Spain amounted to 3.6% of GDP in 2011 which was twice the EU 28 average (where the average public spending on active labour market measures as a percentage of GDP that year was 1.8%).

The Committee recalls that labour market measures should be targeted, effective and regularly monitored. It asks in this respect whether the employment policies in place are monitored and how their effectiveness is evaluated.

The Committee notes that the important labour market reform of 2012 have not been adequate to have any positive impact on the employment figures. On the contrary, all employment figures show a negative trend with youth employment hitting a record high of 53.2%.

#### *Conclusion*

The Committee concludes that the situation in Spain is not in conformity with Article 1§1 of the 1961 Charter on the ground that employment policy efforts have not been adequate in combatting unemployment and promoting job creation.



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

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

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

### **1. Prohibition of discrimination in employment**

The Committee previously examined the relevant legislation with regard to prohibition of discrimination in employment in Conclusions XVII-1 (2005), XIX-1 (2008) and XX-1 (2012).

The Committee asked previously if the courts had given rulings on age discrimination cases, particularly in cases connected with young age. The report states that the Constitutional Court has ruled repeatedly on the constitutionality of difference in treatment on the ground of age in access to employment. The Court considered the age requirement for entrance to the municipal police force reasonable and justified (judgment No. 29 of 1 March 2012). The report provides other examples of decisions relating to discrimination connected with age, particularly a judgment by the Supreme Court in which it set aside the upper age limit of thirty for admission to the National Police Force (judgment of the Supreme Court of 21 March 2011). In another case, the Supreme Court considered it sufficiently justified, and hence non-discriminatory, to apply an upper age limit for admission to the troops and crew members of the armed forces (judgment of the Supreme Court (Division 3) of 30 May 2012).

With regard to penalties, the report states that direct or indirect discrimination (on any ground) in the employment sphere concerning access to employment and employment relations constitutes a very serious crime (under Royal Decree-Law 5/2000 of 4 August 2000, amended by Law No. 62/2003). The report states that fines ranging between €6 251 and €185 515 may be applied. The Committee asks for information in the next report on the compensation awarded to victims in cases of discrimination in employment. It also asks whether there is an upper limit on such awards.

The Committee takes note of the statistics in the report on the work of the labour inspectorate in the field of discrimination in access to employment and employment relations, and on infringements detected, fines imposed and formal notices issued during the reference period. The Committee asks for further information on this subject to be included in the next report.

The report provides information on the judicial decisions relating to cases of discrimination along with statistics on inspections carried out and offences identified in cases of discrimination on the ground of sex or on other grounds. [The Committee notes that according to the General Union of Workers (UGT), the statistics on the labour inspectorate's work are not broken down according to specific grounds of discrimination other than sex and so it is difficult to determine the extent of discrimination on the grounds of race, colour, religion or national extraction in the work sphere (Direct Request (CEACR) – adopted 2014, published 104th ILC session (2015), Discrimination (Employment and Occupation) Convention, 1958 (No. 111)).]

In its previous conclusion, the Committee asked for information on the activities of the Council for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. The report states that under Law No. 15 of 16 September 2014, the Council in question has been renamed the "Council for the Elimination of Racial or Ethnic Discrimination" and is now a collegiate body of the Central Government, which is attached to the Institute for Women and Equal Opportunities (IMIO) but has not been incorporated into its hierarchical structure. The report states that although the Council does not have independent status, it carries out its functions independently. The Committee notes that the Council's tasks include offering independent support or assistance to victims of discrimination on racial or ethnic grounds, conducting independent surveys and publishing independent reports.

The Committee notes from another source that in January 2011 the Spanish Government presented the first version of a draft law on equal treatment and non-discrimination (*Proyecto de Ley integral para la igualdad de trato y la no discriminación*). It provided among other things for an equality body, for all grounds and in all fields, which was independent, which could be effective and whose functions were broader than those required by the directives (European network of legal experts on gender equality and non-discrimination, 2015 Report, Spain). The Committee asks for up-to-date information on this legislation.

As to discrimination on the ground of nationality, the Committee points out that it noted in Conclusions 2012 that the situation in Spain was not in conformity with Article 1§2 of the 1961 Charter on the ground that the restrictions on access to public service employment for non-nationals were excessive. The Committee noted that a large number of such jobs were reserved for nationals such as jobs in the corps of prison support staff, prosecutors, doctors, pharmacists and nurses working for the social security health inspectorate, junior employment and social security inspectors, senior labour and social security inspectors and senior lawyers working for the social security department.

The Committee asked previously whether all the posts in the aforementioned sectors were reserved for nationals and, if so, what justified this situation (Conclusions 2012).

The Committee notes from the Report of the Governmental Committee concerning Conclusions XX-1 (2012) that only Spanish nationals have access to the jobs referred to above. It is also pointed out in the Governmental Committee's Report that public service jobs which do not figure on the list are only open in principle to those individuals who are entitled to freedom of movement (Governmental Committee, Report concerning Conclusions XX-1 (2012) of the 1961 Charter).

The Committee reiterates that under Article 1§2 of the Charter, while 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 other than those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority (Conclusions (2012) Albania). The Committee notes that the list of jobs reserved for Spanish nationals is too long and that only nationals of the EU member states have access to other public service jobs not included in the list. The Committee therefore reiterates its finding of non-conformity on this point.

The report also gives information on the campaigns conducted by the labour inspectorate to verify the working conditions of foreign workers under the 2<sup>nd</sup> Strategic Plan for Citizenship and Integration (PECI) 2011–14, and their results. The Committee notes from an Observation by the ILO's CEACR that, under PECI 2011-2014, a comprehensive strategy to combat racism, racial discrimination, xenophobia and other forms of intolerance has been devised. Although the strategy does not target specific population groups, it takes account of the fact that the situation of migrants and Roma is most vulnerable. The same source states that under PECI 2011-2014 a plan was also adopted to map discrimination in Spain, based on opinion polls and the systematic collection of empirical and official data on complaints, infringements and penalties and offences and crimes of a discriminatory nature (Observation (CEACR) – adopted 2014, published 104th ILC session (2015), Discrimination (Employment and Occupation) Convention, 1958 (No. 111)).

The Committee also takes note of the various measures, programmes and strategies adopted under PECI 2011-2014, which are described in detail in the report. The Committee notes that the report does not provide any information on the specific impact that these measures have had on discrimination in employment and occupation on the grounds of race, colour, religion and national extraction. It asks for a description in the next report of the actual/tangible impact of all these measures on discrimination in employment.

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

The report states that forced or compulsory labour is banned in Spain. There are no specific regulations on the powers of the labour inspectorate in this area.

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

In its previous conclusion (Conclusions XX-1/2012), the Committee asked for the next report to complete the information provided on prison work with reference to its Statement of Interpretation on Article 1§2. As this report does not provide any information in this respect, the Committee repeats its request for the next report to contain relevant information on the working conditions of prisoners and their social protection (in the sphere of employment injury, unemployment, health care and old age pensions). The Committee points out that if the information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 1§2 of the 1961 Charter regarding prohibition of forced labour in respect of work of prisoners.

### ***Domestic work***

In its previous conclusion (Conclusions XX-1/2012), the Committee referred to its Statement of Interpretation and its questions in the General Introduction to Conclusions XX-1/2012 on the existence of forced labour in the domestic environment. As the report fails to provide any information on the legislation adopted to combat this type of forced labour and the measures taken to implement this legislation and supervise its implementation, the Committee repeats its request for relevant information on this point to be included in the next report. The Committee points out that if the information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 1§2 of the 1961 Charter regarding prohibition of forced labour in respect of domestic workers and within family businesses.

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

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

The Committee examined the legislation on respect for the minimum period of service in the armed forces in Spain in Conclusions XX-1(2012). It points out that any minimum period must be of a reasonable duration and that in cases of longer minimum periods due to education or training that an individual has attended, the length must be proportionate to the duration of the education and training. Likewise any fees or costs to be repaid on early termination of service must be proportionate.

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

The Committee notes from the report that the regulation on unemployment insurance and assistance benefits was amended in 2012 by the Royal Decree on measures to guarantee budgetary stability and promote competitiveness. Under the Law of 15 July 2012, the length of payment of contributory unemployment benefits depends on the periods of work for which the person concerned paid contributions previously, generally in the six years immediately preceding the period of unemployment. Benefits may be paid for a period of 4 months to 2 years. Unemployed persons who do not satisfy the conditions to be entitled to unemployment insurance benefits may draw unemployment assistance benefit for a period of six months, renewable twice at most. To be able to claim assistance benefit, claimants must be enrolled with the employment office (for a minimum of one month when they were entitled to unemployment insurance benefits before), be actively seeking a job and not have rejected the offer of a suitable job or refused to take part, without justified reason, in an occupational improvement, training or retraining programme. The new regulation requires claimants to show what action they have taken to seek work actively. In 2013, a pilot project

for a new system for the management of unemployment benefits, making use of IT tools, was launched with a view to pinpointing better those claimants who did not meet the requirement to seek work or training actively.

The Committee points out that whenever the relevant authorities decide to permanently withdraw or temporarily suspend unemployment benefits because the recipient has rejected a job offer, this decision must be open to review by the courts in accordance with the rules and procedures established under the legislation of the State which took the decision. It asks for the next report to state whether a judicial remedy is provided for by Spanish legislation in such cases (Statement of Interpretation on Article 1§2, Conclusions XX-1/2012). The Committee also asks for information in the next report on the results of the pilot study on a new system for the management of unemployment benefits, launched in 2013.

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

The Committee examined the legislation on respect for privacy at work in Spain in Conclusions XIX-1(2008). In its previous conclusion (Conclusions XX-1/2012), it asked for updated information on this issue, taking account of the Statement of Interpretation on Article 1§2 and the General question on workers' right to privacy (Conclusions XX-1/2012). As this report does not provide any information in this respect, the Committee repeats its request for information in the next report on measures taken to ensure that all interferences in workers' private lives are prohibited and, where necessary, sanctioned. The Committee points out that if the information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 1§2 of the 1961 Charter regarding respect for the right to privacy at work.

### ***Conclusion***

The Committee concludes that the situation in Spain is not in conformity with Article 1§2 of the 1961 Charter on the ground that the restrictions on the employment to the public service of States Parties to the Charter are excessive which constitutes a discrimination on grounds of nationality.

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

### *Paragraph 3 - Free placement services*

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

The Committee noted in its previous conclusion (Conclusions 2012) that free of charge public employment services are guaranteed under Law no. 56/2003. They operate as a National Public Employment Service (state level) as well public employment services run by the autonomous regions.

In its last conclusion, the Committee found the situation in Spain not to be in conformity with Article 1§3 of the 1961 Charter on the ground that it had not been established that free placement services were functioning in an effective manner.

The Committee pointed out that in order to assess the effectiveness of employment services it looks at a number of 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 to fill these vacancies. The report does not answer the Committee's questions.

The report states that a Single Job Portal was set up to be used as a database for registering applications for and offers of employment throughout the country. The Committee notes from the report, however, that this Portal is not able to provide information concerning the performance indicators of employment services. The European Commission's 2015 report ([http://ec.europa.eu/europe2020/pdf/csr2015/cr2015\\_spain\\_en.pdf](http://ec.europa.eu/europe2020/pdf/csr2015/cr2015_spain_en.pdf)) states that the Single Job Portal has been operational since July 2014, although it seems no improvements have been made to the posting of job vacancies since the launch stage.

According to the report, co-operation between public employment services and private placement agencies has also been strengthened and governed by the Reference Framework adopted by the Autonomous Communities in 2013. With a budgetary allocation of EUR 30 million for 2014, the Public Employment Service will fund private agencies according to the placements made. The report also states that Law N°. 18/2014, of 15 October 2014, adopting urgent measures to stimulate growth, simplified the rules governing the activity of private agencies and abolished all restrictions concerning their territorial field of action. However, the European Commission's 2015 report states that the administrative ineffectiveness risks impeding public-private co-operation and that no plan has yet been announced to evaluate the performance of private agencies. The Committee asks for comments to the European Commission's report.

In addition, the Committee notes in the report that the Long-term Activation Programme for Employment 2014-2016, which was adopted in 2013, will provide a framework for all political interventions concerning the labour market and public employment services.

The Committee finds that the envisaged measures, presented above, certainly aim to guarantee effectiveness in public employment services, although the impact of these measures will only be seen in the years following the reference period.

The Committee refers to the findings in the European Commission in its 2015 report, stating that there has been only limited progress on the recommendations concerning social problems, the struggle against the segmentation of the labour market and the strengthening of public employment services. The modernisation of public employment services is still lagging behind and risks having negative effects for the implementation of employment policies. Further, the reduction in the number of staff between 2011 and 2014 could have a negative impact on the implementation of new measures to promote employment (see the European Commission's 2015 report). Following the Recommendation of the Council of the European Union concerning the national programme of reforms in Spain for 2015 ([http://ec.europa.eu/europe2020/pdf/csr2015/csr2015\\_council\\_spain\\_en.pdf](http://ec.europa.eu/europe2020/pdf/csr2015/csr2015_council_spain_en.pdf)), the Committee also notes that there has been limited progress recorded by Spain for speeding up modernisation in public employment services and resolving regional disparities.

Considering these evaluations, in addition to the information made available, the Committee finds that the measures taken during the reference period did not make it possible for public employment services to function in an effective manner.

In order to be able to assess the actual effectiveness of free employment services, the Committee requests that the next report provide the following information for each year of the reference period: a) the total number of jobseekers and unemployed persons registered with the Public Employment Service (PES); b) the number of vacancies notified to the PES; c) the number of persons placed via the PES; d) the placement rate (i.e. the percentage of placements compared to the number of advertised vacancies); e) the average time taken by the PES to fill a vacancy; f) the number of placements by the PES as a percentage of total recruitments on the labour market; g) the respective market shares of public and private services. Market share is defined as the number of placements made as a proportion of total recruitments on the labour market.

Furthermore, the Committee requests data on: a) the number of persons working in the PES (at central and local level); b) the number of advisors involved in placement services and the ratio of placement staff to registered jobseekers; c) the coordination between central and local employment services (one of the objectives of the National Reform Programme 2012 and 2013).

Lastly, it is requested that the next report provide information about the participation of trade unions and employers' organisations in organising and running employment services.

#### *Conclusion*

The Committee concludes that the situation in Spain is not in conformity with Article 1§3 of the 1961 Charter on the ground that the measures taken during the reference period did not make it possible for public employment services to function in an effective manner.

**Article 1 - Right to work***Paragraph 4 - Vocational guidance, training and rehabilitation*

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

As Spain has accepted Article 9, 10§3 and 15§1 of the 1961 Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to vocational guidance and training for persons with disabilities are examined under these provisions.

The Committee considered the situation to be in conformity with the 1961 Charter as regards measures relating to vocational guidance (Article 9) and training for persons with disabilities (Article 15§1).

It deferred however its conclusion as regards measures concerning vocational training and retraining of workers (Article 10§3). For the same reasons, the Committee defers its conclusion on Article 1§4.

*Conclusion*

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

## **Article 2 - Right to just conditions of work**

### *Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations*

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

The Committee takes note of the information submitted by Spain in response to the conclusion that it had not been established that all workers exposed to residual risks for health and safety were entitled to appropriate compensatory measures, such as reduction in working hours, exposure time or additional paid leave (Conclusions XX-3 (2014), Spain) .

Article 2§4 requires States Parties to ensure some form of compensation for workers exposed to residual risks that cannot be or have not yet been eliminated or sufficiently reduced either in spite of the effective application of the preventive measures referred to above or because they have not yet been applied (Conclusions 2005, Statement of Interpretation on Article 2§4). Article 2§4 mentions two forms of compensation: reduced working hours and additional paid holidays. In view of the emphasis in this provision on health and safety objectives, however, other measures of reducing exposure time may also ensure conformity with the Charter. The relevance and adequacy of such measures are assessed on a case by case basis (Conclusions XX-3 (2014), Germany).

The report first of all emphasises the obligation laid down by Law No. 31/1995 for employers to ensure the health and safety of workers in all aspects of their activities. It further points out that under Spanish law additional holidays and reduced working hours are not considered as "compensatory measures", but as measures for the protection of the health and safety of workers.

Moreover, Law No. 31/1995 and its implementing decrees contains several references to such measures. Thus royal decrees concerning exposure to chemical agents (Royal Decree No. 374/2001), exposure to noise (Royal Decree No. 286/2006), exposure to mechanical vibration (Royal Decree No. 1311/2005) and exposure to artificial optical radiation (Royal Decree No. 486/2010) all provide for the possibility of reducing the duration and intensity of exposure and/or for adjusting working time. While these decrees set out the general principle of limitation of exposure time and/or adjustment of working hours, Royal Decree No. 1561/1995 provides for more specific limitations of the working day indicating maximum number of hours in work with exposure to environmental risks, in farm and field work, in mining and other underground work and in work carried out in cold thermal environments (e.g. cold stores, chambers and freezing facilities).

The report also gives examples of collective agreements making specific provision for compensatory measures: the Collective Agreement for Construction of 28 February 2012 which provides for increased remuneration and a maximum of six working hours per day in respect of arduous, toxic and dangerous work; the Collective Agreement for Fish Processing Industries of 10 March 2011 which provides for reduced working hours and an increased number of rest breaks for work in cold environments, the Collective Agreement for the Mines of Almadén and Arrayanes, S.A., of 14 December 2010 which provides for maximum of 32 hours per week in certain specified activities and for six-hour working days every second day in other activities and the Collective Agreement for Agriculture in the province of Sevilla under which the working week can in certain weeks be reduced from the normal 39 hours to 36 hours.

Finally, the report provides information on certain measures taken to reduce exposure to risk in respect of staff working under the authority of the Ministry of Defense.

While acknowledging that Spanish law does provide for certain compensatory measures in the meaning of Article 2§4 of the Charter, the Committee considers that the information provided is insufficient to allow it to form a conclusive assessment of the situation.



Firstly, most of the regulations (royal decrees) referred to establish the principle of limitation of exposure to risk and/or reduction of working hours in general terms and do not prescribe specific limitations or reductions. The Committee therefore requests information on provisions of collective agreements which specifically implements the decrees in question and/or on how the decrees are otherwise applied in practice at enterprise level throughout the Spanish labour market.

Secondly, there is no reference to regulations pertaining to work with asbestos and ionising radiation, for example. The Committee therefore requests information on information on whether and how these and other dangerous and unhealthy activities are regulated.

Thirdly, the Committee considers that the examples of collective agreements provided are too fragmentary and limited, both in occupational and geographical terms. It therefore requests additional and more comprehensive information on collective agreement providing for compensatory measures in the meaning of Article 2§4. In this respect it wishes to point out that the increased remuneration foreseen by the Collective Agreement for Construction cannot be regarded as an appropriate measure for the purposes of Article 2§4.

The Committee also asks whether any regulations or collective agreements provide for additional paid leave.

Pending receipt of this information, the Committee reserves its position.

#### *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 contained in the report submitted by Spain.

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

The Committee noted previously (Conclusions XX-1 (2012)) that equal access to vocational guidance in Spain was guaranteed without discrimination for foreign nationals (Organic Law No. 2/2006 on Education; Organic Law No. 4/2000 of 11 January 2000 on the rights and freedoms of aliens).

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

The Committee noted previously that all students, from childhood up to higher education, could make use of the services of Spain's educational guidance centres (Conclusions XX-1 (2012)). The report refers to the relevant legislation, particularly Organic Law No. 2/2006 on Education, as amended by Organic Law No. 8/2013 of 9 December, which establishes and strengthens the right to vocational guidance, Royal Decree No. 1147/2011 of 29 July, which determines the overall organisation of this guidance along with Organic Law No. 5/2002 of 19 June, and Royal Decree No. 1224/2009 of 17 July on Vocational Training. The Committee takes note of the detailed provisions described in the report, which acknowledge the importance of educational and vocational guidance for students and establish the responsibility of the public authorities, the education authorities and teaching staff in promoting guidance through measures including the provision of in-service training for guidance counsellors and other professionals in the government's education and labour departments.

Framing vocational guidance strategies is the responsibility of the Directorate General for Vocational Training of the Ministry of Education, Culture and Sport (Article 7, paragraph g, of Royal Decree No. 257/2012 of 27 January), which also co-ordinates the policies of the autonomous communities. The report points out that the Directorate General takes an active part in the main European forums and networks operating in the guidance field and that this makes it possible to transpose and adapt measures and instruments to Spain which have proved their worth and their effectiveness elsewhere and to give vocational guidance a European dimension, facilitating pupil and teacher mobility. Some of the networks the report mentions are: the *European Lifelong Guidance Policy Network* (ELGPN), Euroguidance, or the network of the National Resource Centres for Vocational Guidance (NRCVG); ACADEMIA, which holds weekly exchange and training sessions for guidance professionals; and PLOTEUS (*Portal on Learning Opportunities Throughout the European Space*), which identifies and lists all the offers of training in the EU member states.

The report also refers to the establishment in 2010 of the TodoFP portal, which is a reference platform on vocational information and guidance comprising interactive tools and applications for pupils, teachers, guidance professionals, companies, the education community and the public. In 2014, the portal was visited 15 553 652 times and an increase of about 10% in this figure was forecast for 2015.

The Committee takes note of the information in the report on the information, guidance and support programme for university students forming part of the 2015 University Strategy adopted in 2009.

According to the report, some 3 256 161 students in lower secondary schools, initial vocational training, upper secondary school and on intermediate and higher training courses had received some form of vocational guidance through the education system. However, the report does not include any information on the human and financial resources involved in the training offered through the state education system. In its previous conclusions, the Committee noted that in 2009-2010, vocational guidance outside universities involved 4 677

counsellors (specialising in psychology and education), 2 831 vocational guidance trainers and 5 050 teachers working with vocational guidance counsellors. The Committee asks for figures on expenditure, staffing and the number of beneficiaries of vocational guidance in the education system to be systematically provided in future reports.

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

With regard to legislative changes affecting vocational guidance in the labour market, the report refers to measures taken in the context of the Spanish Activation for Employment Strategy (Royal Decree No. 751/2014 of 5 September), such as improvements in the effectiveness of the guidance services provided by the public employment services (through the European Strategy for Public Employment Services up to 2020) and the reform of the labour market introduced by Law No. 3/2012 of 6 July. For the period 2014-2016, the Spanish Activation for Employment Strategy plans to introduce new regulations on services, employment and vocational training. These regulations will establish the joint minimum standards to be applied throughout the country in activation for employment programmes and services. Vocational guidance forms part of the main pillar of the Activation for Employment Strategy and includes the following structural goals: to inform users about the labour market and the measures and services offered by the public employment services; to provide jobseekers with a personalised diagnosis based on their profile; to offer personalised management of jobseekers' career paths; to manage job offers; and to establish contacts with companies and other labour market operators.

The report also refers to the adoption in 2015 (outside the reference period) of a Joint Portfolio of National Employment System Services (Royal Decree No. 7/2015, of 16 January), which sets the minimum standards that apply throughout Spain with regard to the services of the national employment office and the standards of quality and fairness to be respected. The Joint Portfolio will also be adopted by the services providing vocational guidance, help with placements and advice to companies, vocational training and qualifications, and advice for self-employed workers and businesses. Regular assessments of the effectiveness of the services on offer are planned.

The report describes a special plan providing for 1 500 additional guidance counsellors to reinforce the services providing assistance for jobseekers, and states that in 2014 guidance services were provided for 4 140 262 persons. The Committee points out that, in order to comply with Article 9 of the Charter, vocational guidance must be given:

- free of charge;
- by trained staff in sufficient numbers;
- to a significant number of people, attempting to reach the widest possible audience and;
- with a sufficient budget.

As the report does not contain any updated information on the numbers of staff currently providing vocational guidance and their qualifications, the Committee asks for this information to be provided regularly in future reports, along with data on the number of those benefiting from vocational guidance measures set up by the public employment services and the financial resources allocated to guidance activities.

### ***Conclusion***

Pending receipt of the requested information, the Committee concludes that the situation in Spain is in conformity with Article 9 of the 1961 Charter.

## **Article 10 - Right to vocational training**

*Paragraph 1 - Promotion of technical and vocational training ; access to higher technical and university education*

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

### ***Secondary and higher education***

The Committee takes note of the legislative developments during the reference period:

- Organic Law 8/2013 to improve the quality of education;
- Royal Law-Decree 1/2011 on urgent measures to promote the transition to the stable employment;
- Royal Law-Decree 3/2011 on urgent measures to improve the employability and the reform of the active employment policy;
- Royal Decree 1529/2012 on the apprenticeship contract and the establishment of the basis for the dual system of vocational training
- Royal Decree 127/2014 which regulates the specific aspects of vocational education.

The Committee takes note of the creation of the interministerial Commission to follow and evaluate the procedure of recognition of professional competences acquired by professional experience.

According to the report since 2006 when the Organic Law of Education entered into force a total of 148 vocational education qualifications have been developed of which 108 were developed during the reference period.

The Committee asks the next report to provide information regarding the outcome of the above legislative developments, especially in the light of the following:

- introducing mechanisms for the recognition/validation of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general, technical and university higher education;
- taking measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market.

The Committee considers that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

### ***Measures to facilitate access to education and their effectiveness***

In its Conclusions XIX-1 The Committee noted that nationals of the other States Parties to the Charter lawfully resident or regularly working in Spain were granted equal access to apprenticeship, continuing vocational training and occupational training. It asked whether these rules apply to all kinds of vocational training, including higher education courses where access is regulated.

The Committee notes that the report does not provide this information. Therefore, it considers that it has not been established that equal treatment of nationals of other States Parties lawfully resident in Spain is guaranteed as regards access to higher vocational education.

### ***Conclusion***

The Committee concludes that the situation in Spain is not in conformity with Article 10§1 of the 1961 Charter on the ground that it has not been established that equal access to higher vocational education is guaranteed to nationals of other States Parties lawfully resident in Spain.

## **Article 10 - Right to vocational training**

### *Paragraph 2 - Apprenticeship*

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

According to the report the aim of the apprenticeship contract is that workers become professionally qualified through work-linked training schemes which combine work with training. The training programmes permit to obtain a formal qualification offered by the education system or the employment sub-system: an intermediate or advanced vocational training qualification or a professional certificate or, if appropriate, even an academic diploma. In addition, candidates must not hold any vocational qualification recognised by the vocational training for employment subsystem or the education system.

According to the Ministry of Employment and Social Security (MEYSS) there has been an increase of 73% in apprenticeship contracts in 2013 compared to 2012. These workers can receive training leading to Professional Certificates and VET Diplomas within the company itself, if that company complies with the requirements to be accredited as a training centre, which ensures that the worker obtains recognition of their training, without having to attend additional training in accredited centres.

According to the report, the features of the dual system of apprenticeship training are:

- the company provides the trainee with a job related to the professional profile of the vocational training qualification and ensures he/she attends the training programmes established for the training activity;
- the company is responsible for monitoring the agreement for the training activity and the coordination of training and job activities;
- the worker must meet the training access requirements;
- the training institution appoints a tutor who is responsible for the planning and monitoring of the learning programme and assessment criteria, and the coordination of the in-company training and development of the learning agreement with, both, the company and the worker;
- at the end of the apprenticeship training period, the worker is exempted from the compulsory on-the-job training module included in the VET qualifications;
- the minimum duration of the contract is one year; the maximum is three. However, the duration of the contract may vary, depending on the collective agreement of the company and on organisational or production needs. In any case, contract duration may not be less than six months or exceed three years.

Participating companies sign a training agreement with both the training institution and the worker (student), which is annexed to his/her contract. Those responsible for the training, in the training institution and company are specified in the agreement, as well as the characteristics and contents of the learning programme. The training activity for this type of contract has to be authorised by the competent Public Employment Service (PES), which is in charge of its monitoring and evaluation. If the company signs contracts in more than one Autonomous Community, the authorisation and evaluation of the activity is the responsibility of the State PES. The learning programme must respect the duration of the compulsory training established in the vocational training qualifications.

The Committee asks the next report to provide information on the total number of apprentices, division of time between theoretical and practical training and the total expenditure.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 10§2 of the 1961 Charter.

## **Article 10 - Right to vocational training**

### *Paragraph 3 - Vocational training and retraining of adult workers*

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

#### ***Employed persons***

The Committee notes from Eurydice (Overview, Spain) that vocational training for people in employment is managed by the State Employment Service and the Tripartite Foundation for Training in Employment. Funding for the training managed by the Tripartite Foundation comes from the collection of the vocational training Social Security contribution, assistance from the European Social Fund and specific contributions established in the budget of the State Public Employment Service. In 2014, the expenditure reached € 950,94 million, to be paid in bonuses for companies, national and regional subsidies, transfers to the National Institute for Public Administration the institution responsible for the training of public employees, and operating expenses.

The Committee recalls that under Article 10§3 of the Charter States must take preventive measures against deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic development. The States should provide information on the types of continuing vocational training and education available, overall participation rate of persons in training, percentage of employees participating in vocational training and total expenditure. The Committee asks the next report to provide this information. It also asks whether the legislation provides for an individual leave for training and if so, what are its characteristics, in particular the length, the remuneration and the initiative to take it. The Committee holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

#### ***Unemployed persons***

According to the report, the Ministry of Employment and Social Security in its Order ESS/12726/2012 has introduced important improvements in the legal framework of the agreements on training, such as raising competitiveness, while respecting the principles of objectivity, equality, transparency and ensuring more efficient management of training programmes, especially in view of scarcity of resources.

The Committee takes notes of the labour reform of 2012, implemented in the reference period, which aimed, among others, at improving the employability of workers. The reform entailed the revision of the vocational education through social dialogue. The aim of the reform was the establish the principles on which the vocational education and training will be based. These are, among others, the individual right to vocational education and the equality of access; collective negotiation and social dialogue as an instrument of development of the system of vocational education; quality, efficiency and transparency in the management; stability, security and certitude in the strategic planning;

The Committee notes from Eurydice that in the case of training for the unemployed, funding comes mainly from the State Public Employment Service and is managed by the education authorities of the Autonomous Communities. Regional governments and local corporations also make contributions from their budgets. In 2014, the employment authorities invested € 924 million in this type of training.

According to the report, the Ministry of Employment and Social Security, with the Order ESS / 1726/2012, has introduced significant improvements in the regulatory basis of vocational training, while introducing competitiveness and respecting the principles of objectivity, equality, transparency and publicity, as well as more efficient use of available resources. The major improvements included the requirement of participation of unemployed persons in certain training programmes directed primarily at employed at a minimum percentage of 30%.•

Committee recalls that the indicators of particular interest when it comes to vocational training for the unemployed are the number of participants, the development in national expenditure and the results of the effort, i.e. the employment effect (Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§3). The Committee asks the next report to provide figures on the total number of unemployed persons having participated in a training and in proportion to the total number of unemployed persons, as well as the percentage of those who found a job afterwards. It holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity.

*Conclusion*

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

## **Article 10 - Right to vocational training**

### *Paragraph 4 - Encouragement for the full utilisation of available facilities*

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

### ***Fees and financial assistance***

In its previous conclusion (Conclusions XX-1) the Committee found that the situation in Spain was not in conformity with Article 10§4 of the 1961 Charter on the ground that it had not been established that the right to equal treatment for nationals of other States Parties lawfully resident or regularly working in Spain is guaranteed with respect to financial assistance for vocational education and training.

The Committee notes from the report of the Governmental Committee (CG (2013) 20) that financial assistance for education and training is regulated by Royal Decree 1721/2007, establishing the system for personalised grants and aids. Article 4.1 (d) of this Decree requires a beneficiary to be Spanish or national of a Member State of the European Union. In this last case, it is required that either the student or his/her supporters are working in Spain. In the case of students of countries that are not members of the EU, the provisions on rights and freedoms of foreigners in Spain and their social integration will apply. These provisions are mainly contained in the Organic Law 4/2000, Article 9 of which provides that all foreign nationals aged under 18 years, regardless of their nationality, have the right to obtain a grant in Spain for professional training, and all those who are aged 18 or over and who live and work legally in Spain also have the right to obtain aid on the same conditions as Spanish citizens.

The Committee understands that the Spanish law does not impose any length of prior residence requirement on foreign nationals for the entitlement to financial assistance for education. The Committee asks the next report to confirm its understanding.

The Committee also asks that each report provide updated information regarding the availability and amount of financial assistance for training, including information about the fees and loans to cover them. The Committee holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

### ***Training during working hours***

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

### ***Efficiency of training***

The Committee notes that as regards vocational education and training for employment, the State Public Employment Service (SEPE) with the cooperation of the Autonomous Communities Employment Services and the Tripartite Foundation for Training for employment (FTFE), and as coordinator of the National Employment System, annually evaluates training initiatives as part of the annual monitoring plan of the entire training for the employment subsystem. Its evaluation is based on a system of indicators and focuses on quality, impact, effectiveness and efficiency. Some of the evaluation indicators are referenced to the European Quality Assurance in Vocational Education and Training (EQAVET) Reference Framework guidelines. The evaluation report is produced by external contractors.

In addition, within the establishment of a new framework for the evaluation of active labour market policies in 2013 different indicators have been established to evaluate initiatives and measures developed by SEPE and the Autonomous Communities. One of the strategic objectives resulting from the annual assessment of employment policies assessment in 2013 is to improve the quality of training for employment. The objective also refers to improving



people's transition to the labour market through training, and special attention is given to the new training and apprenticeship contract which will reinforce the Strategy for Entrepreneurship and Youth Employment for 2013-16.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 10§4 of the 1961 Charter.

## **Article 15 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement**

### *Paragraph 1 - Education and training for persons with disabilities*

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

According to the report, during the 2011-2012 school year, 149 618 children had special educational needs associated with a disability and, of these, 78.5% attended mainstream schools. According to the Ministry of Education, Culture and Sport, in 2013-2014, Spain had 165 101 pupils with special educational needs associated with a disability, 79.6% of whom were in mainstream schools. The Committee wishes to know the exact number of people with disabilities (children and adults), the total number of persons with disabilities who are not being educated and what percentage of them reside in institutions. It also wishes to know the success rate of children with disabilities as regards access to vocational training, further education and finding work in the mainstream labour market.

Spain ratified the United Nations Convention on the Rights of Persons with Disabilities on 3 December 2007.

### **Definition of disability**

The report states that a new Law 26/2011 enacted on 1 August 2011 amends 19 laws affecting the day-to-day lives of people with disabilities and does not require the disability to be officially recognised. Article 1 of the law seeks to bring the legal definition of people with disabilities into line with the definition contained in the United Nations Convention on the Rights of Persons with Disabilities. Under the new legislation, people with disabilities "are those that have physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others [...]. For the purposes of this law, people with a disability shall be deemed to be those with a recognised degree of impairment equal to or greater than 33%". Law 26/2011 also, however, contains a provision requiring the Government to take further positive action, within a maximum period of 12 months, to help disabled people with a degree of impairment less than 33%. The Committee accordingly asks that the next report provide information on the positive action measures provided for in this provision.

The Committee wishes to know whether there is any protection in place for persons whose degree of incapacity is less than 33%. It also wishes to be provided with details of how the degree of incapacity is assessed.

### **Anti-discrimination legislation**

The report states that Article 14 of the Spanish Constitution establishes the principle of equality and prohibits any discrimination (see Conclusions 2012).

The report describes the Royal Decree 1/2013 of 29 November 2013 approving the revised wording of the General law on the rights of persons with disabilities and their social inclusion which seeks to guarantee the right to equal opportunities and equal treatment and the real and effective exercise of their rights by persons with disabilities.

The report further indicates that Law 26/2011 provides for offences and sanctions in the areas of equal opportunities, non-discrimination and universal access for persons with disabilities (Articles 3 and 4). In addition, it contains a new clause expressly entitling victims of discrimination to claim compensation.

In its previous conclusion (Conclusions XX-I (2012)), the Committee asked that the next report provide examples of case law related to discrimination on the ground of disability in relation to education and training. Given that no overview of case law is provided in the report, the Committee reiterates its request.

## **Education**

The report states that Organic Law 2/2006 of 3 May on Education has been amended by Organic Law 8/2013 of 9 December for the Improvement of Quality in Education which seeks, *inter alia*, to reduce school drop-out rates, enhance employability and improve academic results according to international criteria.

## **Vocational training**

According to the report, training for pupils with special educational needs is provided by the Autonomous Communities.

In its previous conclusion (Conclusions XX-I (2012)), the Committee asked that the next report provide more detailed information as regards vocational training, including university. In response, the report describes Organic Law 8/2013 of 9 December 2013 for the Improvement of Quality in Education, amending the Law on Education. According to the report, Royal Decree 1147/2011 of 29 July 2011 establishes the general organisation of vocational education training.

The report states that Royal Decree 127/2014 of 28 February provides for vocational training programmes for students and pupils who have special educational needs. The Committee wishes to know whether the qualifications obtained at the end of such training are recognised for the purposes of pursuing studies or accessing vocational training or the open labour market. The Committee also asks that the next report provide details of the impact in practice of this new procedure, in particular highlighting whether the number of persons with disabilities benefiting from training has increased.

In its previous conclusion (Conclusions XX-I (2012)), the Committee asked for data on the number of people with disabilities attending vocational training in the mainstream and in the special system and data relating to the number of university students with disabilities. The Committee therefore reiterates its request, in particular as regards the number of people with disabilities who have attended vocational training in the mainstream system, the number of people with disabilities attending vocational training in the special system, the number of university students with disabilities, the number of specialist vocational training facilities both for young persons and for adults and the number of persons attending them. The Committee points out that should the next report not provide the requested information, there will be nothing to show that the situation is in conformity with Article 15 §1.

## **Conclusion**

Pending receipt of the requested information, the Committee concludes that the situation in Spain is in conformity with Article 15§1 of the 1961 Charter.

## **Article 15 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement**

### *Paragraph 2 - Employment of persons with disabilities*

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

### ***Employment of persons with disabilities***

In its previous conclusion (Conclusions XX-I (2012)), the Committee asked for clarification and updated data relating to the number of people with disabilities, the number of people with disabilities of working age, the number of those employed respectively in the open market and in sheltered employment, the number of people benefiting from employment promotion measures and the number of people with disabilities seeking employment and those unemployed. According to EUROSTAT, in 2012 there were approximately 3 302 200 people with disabilities requiring assistance in Spain. According to figures provided by the National Institute of Statistics, 1 450 800 people of working age had certified disabilities in 2012 (accounting for 4.76% of the total population of working age). Of these, 54.49% were men. According to the report produced by the Labour Observatory (*Observatorio de las Ocupaciones*), most people with disabilities of working age are aged between 45 and 64 years, and less than 6% are under the age of 25.

According to the report, the number of people with disabilities on fixed-term contracts was 16 279 in 2013 and 18 364 in 2014. The number of people with disabilities on permanent contracts was 6 062 in 2013 and 7 158 in 2014. The Committee notes that these figures are significantly lower than the sum of people with disabilities requiring assistance. Therefore, the Committee asks for explanation of these figures. It asks for up-to-date unequivocal data.

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

In its previous conclusion (Conclusions XX-I(2012)), the Committee asked for information on any relevant case law related to the implementation of anti-discrimination legislation in the field of employment and reasonable accommodation. In response, the report describes in detail the legislation on discrimination and reasonable accommodation and mentions a judgement handed down by the Supreme Court of Justice of Catalonia (No. 2489/2007 of 10 April 2007) relating to a period outside the reference period. The Committee reiterates its request regarding relevant case law.

The report states that Royal Decree 1/2013 of 29 November 2013 approving the revised wording of the General law on the rights of persons with disabilities and their social inclusion prohibits discrimination, both direct and indirect, on the ground of disability, in the field of employment, vocational training, professional advancement and working conditions (in particular, Articles 5 and 36). This Decree harmonises three laws, namely Law 13/1982 on the social integration of people with disabilities, Law No. 51/2003 on equal opportunities, non-discrimination and universal access for persons with disabilities, and Law 49/2007 of 26 December, introducing a range of offences and sanctions in the areas of equal opportunities, non-discrimination and universal access for people with disabilities. Chapter IV deals with the right to work, equal treatment and equal opportunities in terms of access to employment and the working conditions of people with disabilities. Article 37 stipulates that people with disabilities may exercise their right to work through mainstream employment, sheltered employment (in special employment centres and work “enclaves”) and self-employment.

According to the report, the Employment and Social Security Inspectorate is responsible, *inter alia*, for making sure that there is no discrimination in access to employment or in labour relations and that the regulations on adapting work stations to the specific needs of workers with disabilities are complied with. The report states that the Employment and Social Inspectorate’s information system is unable to provide statistical breakdowns where workers with disabilities are concerned.

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

The report states that during the reference period, the Spanish Government made extensive efforts to implement measures to encourage and increase employment, including notably among people with disabilities. The report mentions the following measures in particular:

- Law 56/2003 of 16 December 2003 on employment, as amended by Law 18/2014 of 15 October 2014 approving urgent measures for growth, competitiveness and efficiency, calls, in Article 25, for people with disabilities to be employed both in mainstream jobs and in sheltered jobs through Special Employment Centres. The Committee asks that the next report clarify the relation between workers with disabilities registered in sheltered employment and those registered in special employment centres.
- Royal Decree 10/2011 of 26 August 2011 on urgent measures to promote youth employment, support job stability and maintain vocational retraining programmes for those who have exhausted their unemployment benefits is aimed at improving the skills of young people. The decree introduced a new contract for training and apprenticeship, together with new time-frames for temporary contracts which have the potential to become permanent. Over the period 2012-2014, 306 549 training and apprenticeship contracts were signed.
- Royal Decree 1542/2011 of 31 October adopted the Spanish Employment Strategy for 2012-2014.
- Royal Decree 3/2011 of 14 November approving the revised wording of the Law on Public Procurement.
- The labour reform was approved by Law 3/2012 of 6 July 2012 on urgent measures to reform the labour market, which included measures to encourage the employment of people with disabilities. The measures are in place to ensure both flexibility for employers in managing human resources and job security for workers, together with the appropriate level of social protection.
- The Law 27/2014 of 27 November 2014 on corporation tax introduces tax credits for businesses which create jobs for people with disabilities, according to the degree of incapacity.
- On 12 September 2014, the Council of Ministers approved the Action Plan of the Spanish Disability Strategy for the first phase 2014-2016. The Committee asks that the next report provide information on the progress made, and how this Plan has affected the employment rate of people with disabilities.

As regards measures to promote the integration of people with disabilities in mainstream employment, the report indicates that:

- A quota of 2% of the workforce is reserved for people with disabilities in companies with 50 employees or more, although the law allows for certain exceptions and alternative ways of meeting this obligation (see Conclusions XX-I (2012)). Law 26/2011 introduces new, stiffer penalties for companies which fail to comply. In its previous conclusion (Conclusions XX-I (2012)), the Committee asked that the next report indicate the rate of compliance with the reserved quota system. It also asked for information on the implementation of the measures planned and their impact. As the report does not address this issue, the Committee reiterates its request.
- incentives are available for employers who recruit workers with disabilities on permanent, fixed-term and traineeship contracts (see Conclusions XX-I (2012)).
- specific personal assistance is available to people with particular problems (mental disabilities or people whose disability is greater than 65%).
- 7% of civil service recruitments must be reserved for people with disabilities and of these 2% must be reserved for people with intellectual impairments. The Ministry of Finances and Public Administration has introduced a selection process for people with disabilities. Accordingly, 54 vacancies were filled in 2012, 10 in 2013 and 15 in 2014 (see the report for further details).

According to the report, the number of people with disabilities in mainstream employment on permanent contracts was 9 129 in 2014; the number of such persons on temporary contracts was 14 118 in 2014. The number of people with disabilities in sheltered employment on permanent contracts decreased from 5 114 in 2011 to 4 205 in 2014; the number of such persons on temporary contracts increased from 35 856 in 2011 to 55 352 in 2014.

The Committee notes from the report that the number of jobseekers with disabilities increased over the reference period (180 420 in 2011 and 222 685 in 2014).

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 15§2 of the 1961 Charter.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 1 - Applying existing regulations in a spirit of liberality*

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

It notes that all nationals of member countries of the European Economic Area have full and free access to the labour market and that neither they nor members of their families require a work permit (Royal Decrees 240/2007, 1161/2009, 1710/2011, 16/2012). During the reference period, nationals of the following States Parties to the Social Charter required a work permit: Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia (until 30 June 2015 – outside the reference period), Georgia, Republic of Moldova, Montenegro, Russian Federation, Serbia, “the former Yugoslav Republic of Macedonia”, Turkey and Ukraine. Bulgarian and Romanian nationals saw a gradual lifting of restrictions, under the transitional arrangements, starting in 2009.

### **Work permits**

According to the report, access by non-EU/EEA foreign nationals to the national labour market is governed by Organic Law 4/2000 of 11 January on the rights and freedoms of foreign nationals in Spain and their social integration (LOEX) and its implementing regulation (Royal Decree 557/2011 of 20 April). Under Article 10 of the LOEX, foreigners have the right to be gainfully employed, either on a self-employed basis or as employees, including in the civil service, under the conditions prescribed by law. Foreigners require official authorisation both in order to live and in order to work in Spain (Article 36§1 LOEX), unless otherwise provided in treaties concluded with the countries concerned. The Committee asks that the next report specify which States Parties to the Charter, if any, are covered by such derogations.

First-time authorisations to reside and work in Spain are issued for an initial period of one year, having regard to the national employment situation in a particular sector and place. Thereafter they may be renewed without any geographical or sectoral restrictions. According to the report, geographical or sectoral changes are likewise possible during the first year of validity of the initial residence and work permit. Where the rule relating to the national employment situation applies, foreign workers outside the EU/EEA cannot apply for a work permit themselves. The employer in Spain may apply on their behalf, provided there are no suitable candidates for the job among Spanish or EU-EEA nationals. To this end, every three months the Public Employment Service identifies those occupations where there is a shortage of domestic labour (Catalogue of difficult-to-fill jobs) for each of the territorial entities concerned (provinces, constituencies, etc.).

Exceptions to the Community preference rule are provided for in Article 40 of the LOEX, and in Article 178 of its implementing regulation. This last provision applies, under certain conditions, to managerial or highly skilled staff in a company, highly qualified technicians and scientists, university lecturers and internationally renowned artists.

In answer to the Committee’s question, the report states that, generally speaking, under the current legislation, there are no longer any quotas as regards foreign nationals’ access to the labour market. Article 39 of the LOEX does nevertheless allow the Ministry of Labour and Immigration to draw up an annual forecast of occupations and jobs open to non-resident foreigners, and to reserve a certain number of visas for people with Spanish parents or grandparents or for specific occupations. When making the job offers in question, preference will be given to countries with which Spain has immigration agreements. According to the report, this procedure does not amount to a quota system, but is rather a forecast of companies’ manpower requirements over a particular period, based on their actual needs.

The Committee asks that the next report provide details of the types of work permits available, and those categories of employment for which there is no preliminary review of the

national employment situation, under the Community preference rules. In the meantime, it reserves its position on this point.

### ***Relevant statistics***

The Committee takes note of the statistical data provided in the report, which are not relevant for the purposes of its assessment, however, as they do not indicate to which period they refer, do not relate to the granting of work permits and provide no indication of the number of applications (first-time applications and renewals) and their respective refusal rates. It further notes from the 2015 OECD report on recent developments in migration movements and policies that, at the end of 2013, the foreign population in Spain (5 000 000 people, i.e. 546 000 fewer than in 2012) accounted for 11% of the total population and that the number of work permits issued for employees (non-EEA nationals) fell by 16% between 2012 and 2013 to 39 800.

The Committee points out that its assessment of the degree of liberality in applying existing regulations is based on figures showing the refusal rates for granting work permits both for first-time and for renewal applications. It asks that such information be systematically included in future reports and in the meantime, it considers that it has not been established that in Spain, the existing regulations concerning the right of foreigners to engage in a gainful occupation are applied in a spirit of liberality.

### ***Conclusion***

The Committee concludes that the situation in Spain is not in conformity with Article 18§1 of the 1961 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.



## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 2 - Simplifying existing formalities and reducing dues and taxes*

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

### ***Administrative formalities and time frames for obtaining the documents needed for engaging in a professional occupation***

The report points out that residence and employee work permits are covered by a single procedure which is governed by Articles 36 to 39 of Organic Law 4/2000 of 11 January on the rights and freedoms of foreign nationals in Spain and their social integration (LOEX). The eligibility requirements for these permits are set out in detail in the relevant implementing regulation (Royal Decree 557/2011 of 20 April).

In the case of employees, it is for the employer to submit an application for the work permit, accompanied by a number of supporting documents, including a certificate from the Public Employment Service confirming that no suitable candidate has been found among Spanish or EEA nationals, save as otherwise provided by law. The report states that the maximum time frame for obtaining a work permit is three months from the date on which the application is submitted to the competent authorities and that, if no decision is taken within that period, the application is deemed to have been rejected (first additional provision of the LOEX).

In particular, Article 178 of the implementing regulation for the LOEX allows exceptions to the Community preference rule, under certain conditions, in the case of managerial or highly skilled staff in a company, highly qualified technicians and scientists, university lecturers and internationally renowned artists. For persons in these categories, explains the report, decisions concerning permits must be taken and notified within a maximum period of one month and decisions relating to visas within a maximum period of ten days (Article 180 of the regulation). The same one-month time limit applies when considering applications for residence and employee work permits from family members of a worker who has been accepted under Article 178 of the aforementioned regulation (Article 181 of the regulation).

In the case of self-employment, the worker himself or herself must submit an application, along with the necessary supporting documents. Such applications may be submitted abroad, via the Spanish consulate. Decisions concerning these permits must be notified within three months, failing which the application is deemed to have been rejected.

The report mentions various simplification measures introduced in 2009 (outside the reference period), of which the Committee had taken note in its previous conclusion (Conclusions XX-1 (2012)), to which the Committee also refers for an overview of the conditions governing renewal. In accordance with the first additional provision of the LOEX, the maximum time frame for renewing a work permit is three months after the date on which the application is submitted to the competent authorities and, if no decision is taken within that period, the application is deemed to have been accepted.

### ***Chancery dues and other charges***

As regards the procedural costs involved in obtaining residence and employee work permits, the report refers to Articles 44 to 49 of the LOEX, and to the 18<sup>th</sup> additional provision (Order PRE/1803/2011 of 30 June 2011) of the implementing regulation. The report states that the amounts are revised every year under the State Budget Act.

The Committee takes note of the information concerning fees provided in the report and on the Ministry of Employment's official website on immigration. It notes that, in the case of employee work permits (first-time application), the costs are met by the employer and amount to €195.88 or €391.79 depending on the level of pay. The cost of renewing permits, which is also borne by the employer, is €78.36. For self-employed persons, the cost of obtaining a permit is €195.88.

The Committee asks that future reports regularly include updated information on this point and on any subsequent measures to simplify the formalities and reduce the relevant fees and charges.

*Conclusion*

The Committee concludes that the situation in Spain is in conformity with Article 18§2 of the 1961 Charter.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 3 - Liberalising regulations*

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

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

The report notes that all nationals of member countries of the European Economic Area have full and free access to the labour market and that neither they nor members of their families require a work permit (Royal Decrees 240/2007, 1161/2009, 1710/2011, 16/2012). Gainful employment (residence and work permit) in the case of non-EEA workers, on the other hand, is governed by Organic Law 4/2000 of 11 January on the rights and freedoms of foreign nationals in Spain and their social integration (LOEX) and its implementing regulation (Royal Decree 557/2011 of 20 April).

The Committee refers to its conclusion on Article 18§1 for an overview of the information available on the conditions under which non-EEA workers may engage in waged or self-employed work in Spain. In this connection, it notes that, except in the cases provided for in Article 40 of the LOEX, and in Article 178 of its implementing regulation, the initial residence and employee work permit is issued at the request of the employer, having regard to the national employment situation (i.e. following checks to ensure that there are no suitable candidates among Spanish or EU/EEA nationals) for a given sector and place, and for an initial period of one year. Thereafter it may be renewed without any geographical or sectoral restrictions. According to the report, geographical or sectoral changes are likewise possible during the first year of validity of the initial residence and work permit. The Committee previously noted (Conclusions XX-1 (2012)) that, under Article 203 of the LOEX's implementing regulation, foreign residents, in the course of the validity of their initial residence and work permit, may ask to switch from employee to self-employed status (or vice versa), provided that they meet the eligibility requirements for such status.

According to the report, in a ruling handed down on 1 June 2010 the Supreme Court relaxed the rules, in the sense that the Community arrangements have been widened to include family members of EU nationals, who were previously excluded, namely ascendants of Spanish nationals and of their spouses (persons registered as partners), dependent descendants of EU nationals aged over 21 years and dependent ascendants.

The Committee asks that the next report provide details of the types of work permits available and the conditions for issuing and renewing them. In particular, it requests detailed information about the access of nationals of non-EU/EEA States Parties to the Charter as self-employed workers. In the meantime, it reserves its position on this issue.

In its previous conclusion (Conclusions XX-1 (2012)), the Committee had requested information on the number of applications for work permits submitted by nationals of non-EEA States, as well as on the grounds for which work permits were refused to nationals of non-EEA States Parties to the European Social Charter. It had also asked for information about any measures that might have been adopted (either unilaterally, or by way of reciprocity with other States Parties to the Charter) to liberalise regulations governing the recognition of foreign certifications, professional qualifications and diplomas, with a view to facilitating access to the national labour market. Such information should concern the category of employees, as well as the category of self-employed workers, including workers wishing to establish companies, agencies or branches in order to engage in a gainful occupation.

In the absence of any information on these points, the Committee reiterates its request and holds that, if the next report does not provide information in this respect, there will be nothing to establish that the situation is in conformity with the Charter.

### ***Consequences of loss of employment***

In its previous conclusion (Conclusions XX-1 (2012)), the Committee took note of the measures taken to extend, under certain conditions, the residence and work permits of workers whose employment is terminated through no fault of their own (Organic Law 2/2009, Article 71 of Royal Decree 557/2011). The Committee asks for the next report to confirm that these provisions apply to non-EU/EEA nationals and to provide information on any developments concerning retention of the residence permit in the event of job loss. In the meantime, it considers that there have been no changes in the situation which it previously considered to be in conformity with the Charter.

### ***Conclusion***

Pending receipt of the requested information, the Committee concludes that the situation in Spain is in conformity with Article 18§3 of the 1961 Charter.

**Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

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

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

The Committee notes that under Article 18§4, States undertake not to restrict the right of their nationals to leave the country to engage in gainful employment in other Parties to the Charter. The only permitted restrictions are those prescribed by law and which 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. In this connection, the Committee noted previously that the right of nationals to leave the country is enshrined in Article 19 of the Constitution, and that Article 55 allows derogations in the event of an emergency or state of siege (Conclusions XI-2 (1990) and XII-2(1992)). It asks that future reports systematically indicate whether limitations or restrictions have been imposed in practice on the right of nationals to leave the country and, if this is the case, explain the reasons for these restrictions.

*Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Spain is in conformity with Article 18§4 of the 1961 Charter.

## **Article 1 of the 1988 Additional Protocol - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex**

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

### ***Equal rights***

The Committee points out that it examined the measures relating to maternity protection and family responsibilities under Article 8 of the 1961 Charter (Conclusions XX-4 (2015)).

The Committee examined the legislation on gender equality in employment in Conclusions XX-1 (2012).

The report provides up-to-date information on legislation guaranteeing gender equality in Spain. With regard to the rights of women in employment, the report states that the adoption of Law No. 3/2012 on urgent measures for the reform of the labour market (deriving from Royal Decree-Law 3/2012 of 10 February) resulted in an increase in the financial support granted to companies which employ women, the elimination of sexist titles for job categories, changes to “breastfeeding” leave so that it benefits both men and women, and increased flexibility in the systems for part-time work and teleworking. The Committee notes from an Observation by the ILO’s CEACR that the Trade Union Confederation of Workers’ Commissions (CCOO) notes the flexibility imposed by Law No. 3/2012 of 6 July 2012 on the reform of the labour market and considers that it has resulted in discrimination against women; for instance, there has been a decline in assistance provided to companies employing women upon their return from maternity leave, and part-time work and domestic work have become insecure. The Committee asks what the practical impact or effects of the adoption of Law No. 3/2012 on urgent measures for the reform of the labour market have been on the employment of women (Observation (CEACR) – adopted 2014, published 104th ILC session (2015), Equal Remuneration Convention, 1951 (No. 100)).

It also notes from another Observation by the CEACR that the Trade Union Confederation of Workers’ Commissions (CCOO) also states that the number of equality plans adopted by companies declined in 2013 and 2014 and that measures to promote gender equality in all companies, including those with less than 250 workers, were frozen (Observation (CEACR) – adopted 2014, published 104th ILC session (2015), Discrimination (Employment and Occupation) Convention, 1958 (No. 111)). The Committee asks for the next report to provide information on measures taken to increase the number of companies adopting equality plans and to state whether these plans result from collective bargaining.

The Committee takes note of the information provided by the report concerning the judgements of the Supreme Court and the Constitutional Court on discrimination on the ground of sex. It notes in particular that the Supreme Court found that there was a form of indirect discrimination in the professional advancement system of a chain of large stores, it having been shown that systematically and continuously over time, the percentage of men promoted to the categories of manager, coordinator and technician in this chain was at least double that of women (Judgement of 18 July 2011).

The Committee points out that it asked in its previous conclusion (Conclusions XX-1 (2012) if it was possible, in equal pay litigation cases, to make comparisons of pay and jobs outside the company directly concerned.

The Committee points out that it examines the right to equal pay under Article 4§3 and Article 1 of the 1988 Additional Protocol to the 1961 Charter, and does so therefore every two years (under thematic group 1 “Employment, training and equal opportunities”, and thematic group 3 “Labour rights”).

Accordingly, the Committee refers to its previous conclusion on Article 4§3 in which it examined equal pay for women and men and comparison methods and concluded that the

situation was in conformity with the 1961 Charter because it was possible to compare pay between several companies covered by collective agreements as all collective agreements were published (Conclusions 2014, Article 4§3). The Committee asks for examples of equal pay cases brought before the Spanish courts.

### ***Equal opportunities***

The report states that employment rates in 2014 were 40% for women and 50.3% for men.

According to the report, unemployment rates increased during the reference period, rising from 21% in 2011 to 23.6% in 2014 for men and from 21.8% in 2011 to 25.43% in 2014 for women.

In 2011, 59.3% of all workers were women working part-time. According to the report this figure fell to 56% in 2014.

The Committee notes that according to Eurostat the wage gap between the sexes (i.e. the difference between the average gross hourly earnings of women and men) increased from 16.2% in 2010 (a level resembling the average for the 27 European Union countries) to 17.9% in 2011 and 19.3% in 2012. It also notes that the wage gap was 18.8% in 2013 and 2014 (which was above the average of 16.1% for the 28 European Union countries).

The Committee notes that the UGT and the CCOO state that the wage gap is increasing and the measures adopted to overcome this are ineffective. They also state that the measures adopted by the Government to cope with the economic crisis have resulted in an increase in unemployment, part-time work and the concentration of women in low-paid jobs. According to the UGT, the wage gap is much wider in areas such as the hotel sector and in occupations requiring high academic qualifications (Observation (CEACR) – adopted 2014, published 104th ILC session (2015), Equal Remuneration Convention, 1951 (No. 100)).

The Committee also takes note from the same source of the information provided by the survey carried out in the context of the Strategic Plan for Equality of Opportunity (PEIO) (2014–16), according to which 73.26% of part-time workers are women and their annual income for the previous period (2008-211) was 22.99% lower than that of men. The employment rate for women is also considerably lower and there is a marked segregation in education and in work. The horizontal and vertical segregation in the labour market is characterised by the feminisation of sectors such as education (67% women), health and social services (77% women) and domestic work (88%), while 77% of jobs in the construction, transport and agricultural sectors are occupied by men. Women are also more highly represented in less-skilled occupations and only 3.2% hold positions of responsibility. With regard to segregation in education, women enrol mainly in health and education and are less represented in architectural and engineering studies, for example (Observation (CEACR) – adopted 2014, published 104th ILC session (2015), Equal Remuneration Convention, 1951 (No. 100)).

The Committee asks for information in the next report on the employment rate for women and the wage gap between the sexes over the reference period. It asks in particular for information on practical measures designed to bridge the wage gap and the marked segregation between women and men in education and in work.

The Committee takes note of the statistics in the report on the work of the labour inspectorate in the field of discrimination in access to employment and employment relations, and on infringements detected, fines imposed and formal notices issued during the reference period. It notes that detailed information on monitoring activities with regard to discrimination on the ground of sex is provided in the report.

The report mentions the adoption of Instruction No. 3/2011 on monitoring in companies of effective gender equality, under which examining the situation with regard to discrimination is one of the ongoing tasks of the labour inspectorate. The Committee also notes from the

report that the labour inspectorate conducted regular campaigns against wage discrimination in the period from 2011 to 2014.

The Committee notes that according to the UGT, the action taken by the labour inspectorate to address the wage gap is inadequate (Observation (CEACR) – adopted 2014, published 104th ILC session (2015), Equal Remuneration Convention, 1951 (No. 100)). The Committee asks for further information to be included in the next report on the measures adopted and the surveys/campaigns conducted by the labour inspectorate with regard to wage discrimination on the ground of sex, particularly its work pursuant to Instruction No. 3/2011.

The Committee notes the various measures in favour of equal opportunities described in the report. It notes in particular that the Strategic Plan for Equality of Opportunity (PEIO) (2014–16) was adopted on 7 March 2014 and it has specific objectives in the employment field such as preventing discrimination on the ground of sex in access to employment and employment relations, bridging the wage gap and encouraging entrepreneurship among women. The report states that a Special Plan for Gender Equality at Work and against Wage Discrimination (2014-2016) will be devised for this purpose.

The Committee also takes note of the various equality plans set up by companies, the grants awarded to small and medium-sized businesses for the preparation of these plans and the increase in the percentage of collective agreements containing provisions on equality plans (rising from 63.04% in 2012 to 73.64% in 2014).

The report states that various programmes to assist women at work were set up during the reference period including measures to encourage the employment of women in decision-making jobs and to increase the number of women sitting on company decision-making bodies; programmes and activities to foster the social, occupational and economic integration of women with special problems; programmes to support women entrepreneurs through simplified access to finance and assistance; and campaigns and projects highlighting the importance of reconciling working, personal and family life. As to public sector employment, the report mentions that the Plan for Gender Equality in the Central Government and its Public Bodies establishes the strategies and measures to be adopted to promote equal treatment and opportunities in public sector employment.

The Committee asks for updated information in the next report on the position of women in employment and training and, in particular, the presence of women in managerial positions. It also asks to be informed of any positive measure taken to promote gender equality in employment.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 1 of the Additional Protocol to the 1961 Charter.





January 2017

## **1961 European Social Charter**

European Committee of Social Rights

Conclusions XXI-1 (2016)

**POLAND**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the 1961 European Social Charter (the 1961 Charter) and the 1988 Additional Protocol (the Additional Protocol). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure

The following chapter concerns Poland which ratified the 1961 Charter on 25 June 1997. The deadline for submitting the 15th report was 31 October 2015 and Poland submitted it on 1st February 2016.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of the thematic group "Employment, training and equal opportunities":

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

Poland has accepted all provisions from the above-mentioned group except Articles 10§§3 and 4, 18§§1 to 3 and Article 1 of the 1988 Additional Protocol.

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

The conclusions relating to Poland concern 10 situations and are as follows:

– 8 conclusions of conformity: Articles 1§§1 et 4; 9; 10§§1 et 2; 15§§1 et 2; 18§4 .

In respect of the other 2 situations related to Article 1§§2 and 3 the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Poland under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

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

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 4 of the Additional Protocol).

The report should also contain information requested by the Committee in Conclusions XX-4 (2015) in respect of its findings of non-conformity due to a repeated lack of information:

- the right of the family to social, legal and economic protection (Article 16),  
the right of migrant workers and their families to protection and assistance – departure, journey and reception (Article 19§2).

The deadline for submitting that report was 31 October 2016.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

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

### *Paragraph 1 - Policy of full employment*

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

### ***Employment situation***

The Committee notes from Eurostat, that the GDP growth rate decreased sharply from 2011 (5.0%) to 2012 (1.6%). The GDP growth rate recovered between 2013 (1.3%) and 2014 (3.3%). The GDP growth rate was well beyond the EU 28 average which stood at 1.4% in 2014.

The overall employment rate increased during the reference period (2011 – 59.3%; 2014 – 61.4%). The overall employment rate was still below the EU 28 average of 64.9% in 2014.

The male employment rate increased from 66.1% in 2011 to 68.2% in 2014. This was approaching the EU 28 average rate of 70.1% in 2014. The female employment rate increased (2009 – 52.8%; 2014 – 55.2%). This rate was still below the EU 28 average which stood at 59.6% in 2014. The employment rate of older workers increased sharply from 32.3% in 2009 to 42.5% in 2014. It remained however well below the EU 28 average of 51.8% in 2014.

The unemployment rate decreased from 9.7% in 2011 to 9.0% in 2014, which was below the EU 28 average of 10.2%. The youth unemployment (% of active population aged 15-24) decreased from 25.8% in 2011 to 23.9% in 2014. The long-term unemployment rate (% of active population aged 15-74) increased slightly from 3.6% in 2011 to 3.8% in 2014.

The Committee notes that the overall labour market situation in Poland improved during the reference period although the youth unemployment rate is still worrying.

### ***Employment policy***

The Committee notes from the report, that the national employment policy is enshrined in the 2020 Development Strategy. The strategy focuses on the development of the human capital and on social integration. The objective on the development of the human capital is further defined by three priorities: a) professional activity; b) the improvement in the quality of human capital and c) the increase in professional and territorial mobility. The second objective on social integration includes two priorities, namely a) the increase of activities for dealing with socially excluded people and b) the reduction of vulnerable groups risking of falling into poverty.

The Committee notes in particular the efforts undertaken to introduce the youth into the labor market. A specific program on 'The youth on the labor market' was introduced between 2012 and 2014.

According to Eurostat, public expenditure on active labour market policies in Poland amounted to 0.8% of GDP in 2013 which was considerably lower than the EU 28 average (where in 2011 the average public spending on active labour market measures as a percentage of GDP that year was 1.8%).

Despite a growing importance of evaluation, a systematic assessment with respect to effectiveness of specific active labour market programmes has not yet been developed. The Committee recalls that labour market measures should be targeted, effective and regularly monitored and asks therefore the next report to provide information on how employment policies are monitored and how their effectiveness is evaluated.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 1§1 of the 1961 Charter.

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

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

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

### **1. Prohibition of discrimination in employment**

In its previous conclusion (Conclusions XX-1 (2012)), the Committee noted that a law implementing certain EU provisions on equal treatment had been passed on 3 December 2010 and had entered into force on 1 January 2011. It also noted that this legislation applied in particular to the conditions for starting up and performing business and professional activity, including in the context of employment relationships and of work performed under civil law contracts. The Committee asked whether this covered recruitment conditions and how this act interrelates with the Labour Code in this context and that of employment relationships.

The report states that the Law implementing certain EU provisions on equal treatment (“the Equal Treatment Act”) prohibits direct and indirect discrimination on the ground of gender, race, ethnic origin, nationality, religion, faith, beliefs, disability, age and sexual orientation. The report states that the provisions of this law also apply to the conditions for starting up and performing business and professional activity, including in the context of employment relationships and of work performed under civil law contracts. The provisions of the Equal Treatment Act are supplemented by those of the Labour Code, which lays down the principle of equal treatment, including in the context of recruitment, and provides that the rejection of candidates can infringe this principle. The Labour Code also includes a long list of discriminatory conduct and applies to both fixed-term and permanent contracts and to full and part-time work. However, it only applies in the context of employment relationships. It does not cover work performed under civil law contracts.

The Committee notes from a Direct Request by the ILO-CEACR that the Equal Treatment Act applies to civil contracts, self-employment and independent professions, as well as vocational training and education. The Act also defines and prohibits harassment and sexual harassment, prohibits all incitement to discriminate and introduces the prohibition of victimisation and the duty to make reasonable accommodation for persons with disabilities. The same source states that indirect discrimination is defined in the Labour Code as a particular disadvantage “for all or a significant number of employees belonging to a group”. This definition differs from that given in section 3(2) of the Equal Treatment Act, which refers to a “person” rather than a “group”. In determining whether indirect discrimination has occurred, the Supreme Court considers which community the regulation may affect and what impact the regulation has on that group (Direct Request (CEACR) – adopted 2014, published 104th ILC session (2015), Discrimination (Employment and Occupation) Convention, (No. 111)). The Committee asks for clarification in the next report on the difference between the definitions of indirect discrimination in the Equal Treatment Act and the Labour Code and for information, including details of court decisions, indicating how the prohibition on indirect discrimination in employment provided for in the Equal Treatment Act and the Labour Code has been applied in practice.

The Committee noted previously that age discrimination was often linked to sex discrimination. It put this down to the fact that the retirement age for women was lower than for men and that some employers therefore preferred to dismiss women rather than men of the same age because the women were already entitled to pensions (Conclusions XX-1 (2012)). The Committee asked whether there were cases where the legislation provided for different treatment between men and women in terms of retirement age and what justified them. The report states that employers may not terminate the employment contracts of employees who are due to reach retirement age within four years, assuming that the length of the career of the worker concerned entitles him or her to retire at that age. As a result of

the alignment and the progressive increase of the statutory retirement age, the provision in question will lead to fewer and fewer differences in treatment owing to the difference in retirement age of men and women.

The Committee noted previously that no separate statistical data on cases involving employment discrimination on the grounds of sexual orientation were available. It asked what explained this situation and requested information on action and campaigns undertaken by the authorities to combat discrimination on the grounds of sexual orientation (Conclusions XX-1 (2012)). The report states that the statistics available to the Ministry of Justice do not enable it to single out cases linked specifically to discrimination on the ground of sexual orientation. At the end of 2014, the Government Plenipotentiary for Equal Treatment decided to set up two teams with specific responsibility for the question of the LGBTI community (one dealing with legal and legislative matters and the other with education and awareness-raising). The meeting of the education and awareness-raising group focused on proposed activities to improve the situation of non-heterosexual and transsexual persons on the labour market. The group concluded that the labour inspectorate should be asked to set up activities to improve the protection of non-heterosexual and transsexual persons on the labour market. It was agreed that the group would prepare a publication to be distributed to employees on the rights of non-heterosexual and transsexual persons during recruitment and another intended for employers containing information on discrimination linked to sexual orientation and means of preventing discrimination in the workplace. The Committee asks to be informed about the future activities of these teams and the impact of these measures or activities on the fight against discrimination in employment on the ground of sexual orientation.

As to remedies, the Committee notes from another source that the 2010 Equal Treatment Act introduces a general compensation clause stating that all natural or legal persons who are victims of a failure to comply with the principle of equal treatment have the right to compensation (Section 13). However, only five cases of this type have come before the courts in four years (2010-2014). One of the reasons for this, pointed out by the Ombudsman's office in its annual reports, is that the new legislation refers only to a form of compensation (*odszkodowanie*) which covers material damage but not non-material damage, thus limiting the protection afforded (European Network of Legal Experts in Gender Equality and Non-Discrimination, Report on Poland, 2015).

According to the same source, persons may also institute general civil proceedings. Under the Civil Code (Articles 23 and 24) claims may be made for material and non-material damages, but there is no shift of the burden of proof in general civil procedure. In matters not covered by the Equal Treatment Act, another form of civil protection can be used – protection of 'personal rights' such as health, freedom and honour etc. An individual whose personal rights are endangered by another's actions may: demand that the action cease, unless it is not unlawful; demand that the effects of the violation be rectified (in particular, that a statement of appropriate content and form be made); and demand pecuniary satisfaction or payment of an appropriate sum to a designated social cause. If the infringement of personal rights results in material damage, the victim may demand redress under general law terms. These provisions on personal rights have now become a more popular basis for discrimination claims than the Equal Treatment Act, which is the more specific Act.

Claims arising from an employment relationship can be dealt with either by a labour court or by a conciliation committee. The special employment-related claim for compensation was introduced into the Labour Code in 2004. Anyone who suffers from an infringement of the principle of equality in employment is entitled to start judicial proceedings and to seek compensation not lower than the minimum monthly salary.

The Committee points out that in cases of discrimination, remedies must be effective, proportionate and dissuasive. Compensation for all acts of discrimination including

discriminatory dismissal, must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed (Conclusions 2012, Andorra). The Committee asks if there is an upper limit on compensation in cases of discrimination in employment.

As to the burden of proof, under the Labour Code and the Equal Treatment Act, the complainant must substantiate the probability of an infringement (although the courts also require some evidence of a particular ground of discrimination) and the defendant is required to show that he or she has not committed the alleged offence. The Committee asks how this rule is applied by the courts in practice.

With regard to sanctions, the Committee notes from the report on Poland by the European Network of Legal Experts in Gender Equality and Non-Discrimination that under Polish anti-discrimination law, there is no specific system of sanctions (apart from compensation under the Civil Code and Labour Code, as described above), but only the penalties and punishments set out in the Criminal Code and the Minor Offences Code. On the basis of the Civil Code and the Labour Code, it is possible to claim compensation for material and non-material damage (European Network of Legal Experts in Gender Equality and Non-Discrimination, Poland, 2015). The Committee asks for examples of penalties applied against employers and compensation granted to the victims of discrimination in practice.

In its previous conclusion, the Committee asked why so few cases of discrimination in employment were brought before the courts. It also asked what types of discrimination were found most frequently by the courts and what follow-up action had been taken (Conclusions XX-1 (2012)). The report states that the low number of cases brought before the courts can be explained by the special nature of such cases. In most of these cases little or no supporting documentary evidence is provided, and it is often a matter of the employee's word against the employer's. It can also be difficult to collect statements from co-workers who fear they will lose their job. It would seem that legal action alleging discrimination on the basis of the Equal Treatment Act can come up against obstacles such as procedural costs, as provided for by the Law of 28 July 2005 on legal costs in civil proceedings, although these costs may be partly or totally waived in accordance with a wide range of exemptions applying to certain cases and persons.

The Ombudsman's Office has a collection of information on all cases relating to equal treatment in employment. There have been 63 cases of discrimination in employment brought under Article 11 of the Labour Code, of which six were found to be generally well-founded. According to the Ombudsman, this low percentage of cases of discrimination in employment dealt with by the Polish courts is accounted for by the low level of knowledge about the law among Polish citizens, their distrust of the authorities and, above all, a decline in the effectiveness of measures to combat discrimination on the ground of disability in Poland. The statistics show mobbing or workplace bullying to be the courts' most frequent findings.

In 2014, an alliance of NGOs contacted all of Poland's courts asking them, under the official procedure for access to public information, to provide data on cases they had dealt with under the Equal Treatment Act. Replies were received from 287 courts and it emerged that only five cases had been brought before the courts in four years under the Act (some by the organisations carrying out the survey), thus showing clearly that hardly any complaints came before the courts on the basis of the 2010 Equal Treatment Act. The number of cases brought under the Labour Code alleging discrimination in employment is also relatively low (50 to 100 cases per year) (European Network of Legal Experts in Gender Equality and Non-Discrimination, Report on Poland, 2015).

In its previous conclusion (Conclusions XX-1 (2012)), the Committee noted that under the Equal Treatment Act of 2010, the Ombudsman (*Rzecznik Praw Obywatelskich*) was assigned the task of promoting equality. The Committee asked for information on the main

conclusions and recommendations set out in the Ombudsman's annual reports regarding employment discrimination and details of follow-up action taken on them. The report states that the Ombudsman has carried out studies and surveys on the wage gap between women and men, preventing discrimination against persons with disabilities during recruitment and the situation of young parents on the labour market attempting to reconcile work and family life. From the information collected by the Ombudsman it is clear that non-heterosexual and transsexual persons are particularly exposed to discrimination. A study on discrimination against transsexual persons during recruitment was carried out in the second half of 2015. The Committee asks what the results and conclusions of this study were. Between 2011 and 2013, the Ombudsman was presented with 256 cases relating to matters of discrimination against persons with disabilities in employment and during recruitment.

The report points out that the fact that the Ombudsman's Office's powers are limited to overseeing the actions of public bodies and institutions severely hampers it in the task of monitoring the situation of persons exposed to the risk of discrimination on the labour market. Actions and omissions by natural persons fall outside the Ombudsman's remit, including when they undermine the rights and freedoms of third parties. In cases involving private parties, the Ombudsman's powers are limited to identifying the means of action available to complainants. The report points out that private entrepreneurs and other parties outside the Ombudsman's control form the majority of employers in Poland. In addition, the report mentions that the fact that the labour inspectorate does not have the authority to monitor compliance with workers' rights by employers who have signed contracts with their employees other than employment contracts, whereas employees are more and more frequently bound by a civil law contract rather than an employment relationship, forms another obstacle to detecting cases of discrimination at work.

The Committee asked previously (Conclusions XX-1 (2012) for information on the findings of inspections carried out and follow-up action taken. The Committee takes note of the detailed information provided in the report on the supervision of the application of non-discrimination rules by the labour inspectorate. The report states that in 2014, the labour inspectorate focused on compliance with anti-discrimination provisions by employment agencies and with regard to temporary workers. The most frequent cases of non-compliance with anti-discrimination provisions during this period related to discriminatory vacancy notices or rejections of job candidates.

The Committee takes note of the low number of cases of discrimination in employment brought before the Polish courts during the reference period. It also notes that the Ombudsman's Office's powers are limited to monitor the actions of public bodies and institutions. The Committee asks the next report to indicate the measures/actions/mechanisms taken or envisaged by the Government to guarantee the effective implementation of the legislation prohibiting the discrimination in employment in practice. Pending receipt of the information requested, the Committee defers its conclusion.

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

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

The Committee noted the information concerning prison work in its previous conclusion (Conclusions XX-1/2012). It referred there to its Statement of Interpretation on Article 1§2 and its questions set out in the General Introduction to Conclusions XX-1/2012, and asked for relevant information in this respect. In the absence of such information, the Committee reiterates its request that the next report include up-to-date information on the points raised in the Statement of Interpretation and, in particular, on the arrangements governing prison work, which should apply the principle of non-discrimination enshrined in the Charter and concern pay, hours and other working conditions, as well as on social protection (in the sphere of employment injury, unemployment, health care and old age pensions). The Committee points out that if the information is not provided in the next report, there will be



nothing to establish that the situation is in conformity with Article 1§2 of the 1961 Charter regarding prohibition of forced labour in respect of work of prisoners.

### ***Domestic work***

The report states that all employment relationships between employees and employers based on employment contracts, including domestic work in an individual's home, are covered by the general provisions of labour law. In particular, the Employment and Labour Market Institutions Promotion Act of 20 April 2004, which lays down the conditions for granting work permits, requires the authority responsible for issuing such permits (the voivod) to ensure equal pay for nationals and foreigners. The future employer must apply for the work permit and send it to the future employee to enable the latter to take the necessary steps to obtain a visa valid for engaging in paid employment in Poland. A migrant worker in possession of an employment contract is entitled to regular payment on the dates agreed of his or her wages, the amount of which must not be lower than indicated in the work permit and employment contract, to protection against discrimination and abuse, to periods of rest and to leave and holidays; he or she is entitled to work in conditions of appropriate safety and hygiene, to choose his or her place of residence and to be granted an employment certificate. The temporary residence and work permit is withdrawn if the relevant conditions are no longer met, in particular concerning the declared purpose of the individual's residence in the country. The signing of an employment contract with a new employer facilitates the granting of a new permit.

The Committee notes from the report that labour inspectors in principle have the same duties regarding domestic employees as regarding other employees. Nevertheless, inspections are not usually carried out in private homes. Polish legislation makes no specific provision for labour inspectors to visit private homes. Checks by the labour inspectorate regarding domestic work concern the application of labour law, occupational health and safety and the lawfulness of employment.

The Committee takes note of the information provided. It asks for the next report to indicate the legal provisions designed to protect domestic employees in the event of exploitation by their employers and on the measures taken to supervise their application (see Statement of Interpretation on Article 1§2, Conclusions XX-1/2012).

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

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

The Committee notes from the report that the Military Service Act of 11 September 2013 provides that length of service in the armed forces is of indefinite duration for career military service and a maximum of 12 years for contract-based military service, the latter being the length of an individual contract. Military personnel may terminate their employment contracts at any time, without having to give reasons. Termination takes effect six months after notification. The notice period may be shortened by mutual agreement between the individual concerned and the relevant body. Military personnel who undertake studies, placements or training courses, in Poland or abroad, at the expense of the armed forces, the cost of which exceeds six times the minimum salary of a professional soldier, and who decide to terminate their service early are subject to provisions laying down the arrangements for repayment of the costs in proportion to their length of service following the completion of such training, placements or studies. In addition, the military personnel concerned may be removed from the training if they fail to make progress or breach the rules or at their own request. All the regulations governing assistance with vocational training for military personnel, including fees and costs to be repaid, are set out in the Order of the Ministry of National Defence of 15 September 2014 on the training of professional military personnel. Disputes concerning contracts are heard by ordinary courts.

The Committee takes note of the information provided. It requests that the next report provide up-to-date information on the impact of studies or training courses followed by military personnel on the duration of their service in the armed forces and on the possible financial repercussions of early termination of service.

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

The Committee notes that the report does not answer the questions it put on the requirement to accept the offer of a job in its Statement of Interpretation on Article 1§2 in the General Introduction to Conclusions XX-1/2012. Consequently, the Committee repeats its request for relevant information in the next report on the matters raised in the Statement of Interpretation, particularly on the remedies available for the persons concerned to dispute decisions to suspend or withdraw unemployment benefit. The Committee points out that if the information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 1§2 of the 1961 Charter regarding the obligation to accept a job offer or training, or lose unemployment benefits.

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

The Committee notes from the report that working hours and working time are regulated by the Labour Code. Any hour worked over the statutory limit at the employer's request constitutes overtime. Under the code, employers may ask employees to work overtime in emergencies (to save lives, to protect health or the environment), in the event of breakdowns or for the particular needs of the employer. In the latter case, overtime must not exceed 150 hours a year per employee. Overtime may be worked at the usual workplace or another place indicated by the employer (on-call). The length of time on-call must comply with the right to rest periods. The report also indicates that employers may interrupt employees' leave if urgent work necessitated by circumstances which could not be foreseen at the start of the leave has to be carried out immediately. The costs incurred by employees in this case must be borne by the employers. Under the Civil Code, employees may appeal to the labour inspectorate if employers fail to observe the right to rest periods and annual leave or the rules on working hours.

The Committee asks for the next report to state if interference with workers' private lives is punished under Polish legislation (General Question on the right of workers to privacy, Conclusions XX-1/2012).

### ***Conclusion***

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

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

### *Paragraph 3 - Free placement services*

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

The current report includes updated performance data of the public employment services. The number of jobseekers registered with public employment services (PES) remained almost at the same level during the reference period: in 2011 there were 2,591,458 jobseekers and in 2014, 2,452,845 jobseekers. The number of vacancies registered with the employment offices increased from 743,068 to 1,094,883 in 2014. Nevertheless, the placement rate of the public employment services (measured as a percentage of the total vacancies notified) remained low with a slight increase 15,1% in 2011 to 17,9% in 2012, down again to 15,1% in 2014. The average time in finding a job increased from 11,1 months in 2011 to 12,9 months in 2014, also marking an increase in relation to the precedent cycle (it was 10 months in 2010).

During the reference period, there were 341 district employment offices and 16 regional employment offices.

As regards total staff of all public employment offices, the report indicates that in 2011 there were 23,638 staff members, out of which 3,676 were involved in placement activities; in 2014, 22,869 staff members, out of which 4,276 were involved in placement activities. The report indicates that during the reference period, the ratio of placement staff to registered jobseekers was 0,2%. In this connection, taking into account the numbers of jobseekers and staff members mentioned above, the Committee asks for further clarification on the indicated figure of the ratio of placement staff to registered jobseekers.

In its previous conclusion (Conclusions 2012), the Committee noted that the Polish law on promotion of employment authorizes the District President (*starosta*) to sign a contract with a private agency which commits itself in finding a job for an unemployed person for at least one year. It also noted that this provision aims at providing an additional opportunity for jobseekers in particular the long-term unemployed. In reply to the Committee's request, the report indicates that no contract of this type has been signed during 2013 and 2014. Moreover, no information has been provided on the cooperation between public and private services. Therefore, the Committee asks the next report to contain information on this cooperation.

The Committee notes from the 2015 European Commission report ([http://ec.europa.eu/europe2020/pdf/csr2015/cr2015\\_poland\\_en.pdf](http://ec.europa.eu/europe2020/pdf/csr2015/cr2015_poland_en.pdf)) that public employment services in Poland failed to adequately address the labour market performance issues due to a lack of resources and inefficient functioning. The above mentioned report underlines the weak monitoring, insufficient coordination of the fragmented PES system and a lack of skilled personnel hindering its efficient functioning. The Committee asks the next report to submit observations on this assessment. Even if outside the reference period, the Committee takes note of the 2015 amendment of the act on employment promotion and labour market institutions that seems to have introduced a major reform of the public employment services and asks to be informed on the impact of this reform on the effectiveness of public employment services.

In this connection, following the recent reform, the Committee asks for the next report to provide information for each year in the reference period on: a) the total number of jobseekers and unemployed persons registered with the public employment service (PES); b) the number of vacancies notified to PES; c) the number of persons placed via PES; d) the placement rate (i.e. the percentage of placements compared to the number of notified vacancies); e) respective market shares of public and private services (market share is measured as the number of placements effected as a proportion of total hirings in the labour market). Furthermore, the Committee requests data on: a) the number of persons working in PES (at central and local level); b) the number of counsellors involved in placement services

and the ratio of placement staff to registered jobseekers; c) the average time taken by PES to fill a vacancy.

The Committee also asks the next report for information on the participation of trade union and employers' organisations in the organisation and running of the employment services.

*Conclusion*

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

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

### *Paragraph 4 - Vocational guidance, training and rehabilitation*

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

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

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

### ***Equal treatment***

The Committee found previously that the situation was not in conformity with Article 1§4 of the 1961 Charter on the ground that access to further training for nationals of other States Parties was subject to an excessive length of-residence-requirement (Conclusions XVI-2 (2004), XVIII-2 (2007), XIX-1 (2008) and XX-1 (2012)). In this connection, the report states that the provisions restricting foreigners' access to vocational training were altered following the transposition of Directive 2011/98/EU of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. The scope of the Act on employment promotion and labour market institutions, which lays down the requirements for the issuing of work permits by the regional authorities (*voïvodie*), was amended with effect from 1 May 2014. Under the new provisions, holders of temporary residence permits or of employment visas now have access to labour market services. Continuing training is therefore available not only to foreigners with permanent resident status in Poland but also to holders of other types of residence permits, provided that the latter are linked to employment (holders of "05" and "06" employment visas, holders of temporary residence and work permits, EU Blue Card holders, holders of temporary residence permits for scientific research).

However, the report indicates that holders of non-permanent residence permits are not entitled to grants, the reimbursement of training expenses, loans to cover training expenses or complementary funding for postgraduate studies. Moreover, access to labour market services, including continuing training, is still restricted for some groups of foreigners (i.e. holders of visas other than those giving entitlement to work and holders of some temporary residence permits) insofar as the purpose and declared length of residence does not imply engagement in employment and the persons concerned usually only stay in the country for a relatively short period of time.

Under Article 1§4, states must provide access to guidance and vocational training for all persons interested and ensure equality of treatment to nationals of other States Parties lawfully resident or regularly working on the territory of the Party concerned. No length of residence should be required from students and trainees residing in any capacity, or entitled to reside by reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. Any length-of-residence requirement for foreigners wishing to receive vocational guidance, training or rehabilitation constitutes unequal treatment in breach of the Charter. The Committee takes note of the fact that access to training has been extended to certain categories of foreigners whose residence permits are linked to employment, without any length-of-residence requirement.

### ***Vocational guidance***

With regard to measures relating to vocational guidance, the Committee refers to its assessment under Article 9, in which it finds the situation to be in conformity with the 1961 Charter.

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

The report indicates that the Act on employment promotion and labour market institutions as amended in May 2014 introduced new employment support measures for persons aged under 30, including “placement vouchers” and “training vouchers”. Training vouchers enable unemployed persons themselves to choose the training they deem necessary for finding employment and meet the relevant costs (including transport and accommodation expenses) for an amount equivalent to the average wage. Placement vouchers enable young unemployed persons to do work placements with employers of their choosing. This option is conditional on the employers undertaking to hire the unemployed persons after the placements. It enables the young persons to gain work experience (six months’ placement plus six months’ employment). The unemployed persons receive grants amounting to 120% of unemployment benefit. In addition, employers who meet their obligations receive a subsidy of 1500 zł (€348). The 2014 amendment also established a national training fund designed to support employers in their efforts to increase employees’ qualifications. The fund is used to cover training project expenses, including the definition of training needs in the employer’s company; staff education and training; exams leading to certificates, diplomas and other documents certifying the skills learned by training project participants; medical and psychological tests required for learning or engaging in an occupation; and accident insurance for training project participants. The funds are also used for promotion, identification of skills and qualification needs on the labour market, consultation and advice for employers about the use of the training fund and research on the results achieved with the support provided. In 2014 and 2015 (outside the reference period), the fund supported continuing training for employees and employers aged under 45 years. The amount available was 40 million zł (€9 289 470) in 2014 and 179.1 million zł (€41 593 600) in 2015.

The Committee takes note of the measures described in the report that were adopted to implement the 2014 amendments, in particular with a view to improving the public employment services’ web portal and thereby promoting access to information about continuing training.

The report indicates that 53 825 unemployed persons were trained in 2011, 78 012 in 2012, 83 431 in 2013 and 77 232 in 2014. The number of unemployed persons who completed placements and adult vocational training in 2011-2012 and placements from 2013 to 2014 totalled 171 474 in 2011, 134 258 in 2012, 197 296 in 2013 and 191 266 in 2014. Unemployed persons referred for adult vocational training totalled 336 in 2011, 355 in 2012, 427 in 2013 and 162 in 2014. In 2014, most participants completed training courses held by employment offices in the following areas: transport (including driving lessons) – 15 600 persons; management and administration – 7 000 persons; sales, marketing, public relations, estate agents – 4 200 persons; architecture and building – 4 000 persons; accounting, banking services, insurance, investment analysis – 4 000 persons. In 2014, most of the training concerned the following areas: secretarial and office work – 38 400 persons; sales, marketing, public relations, estate agents – 18 500 persons; restaurant and catering services – 6 400 persons; social welfare (including care for people with disabilities, the elderly and children, voluntary work) – 5 100 persons; accounting, banking services, insurance, investment analysis – 4 800 persons. The Committee also takes note of the data in the report on the beneficiaries of measures to improve vocational qualifications funded by employment offices and on the beneficiaries of training courses commissioned from third parties by employment offices.

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

With regard to measures relating to vocational guidance and training for persons with disabilities, the Committee refers to its assessment under Article 15§1, in which it finds the situation to be in conformity with the 1961 Charter.

*Conclusion*

The Committee concludes that the situation in Poland is in conformity with Article 1§4 of the 1961 Charter.

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

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

The Committee noted previously (Conclusions XVIII-2 (2007)) that under the Law of 2004 on the promotion of employment and labour market institutions, vocational guidance is available to anyone, regardless of his or her nationality.

As to vocational guidance for persons with disabilities, whether in the education system or the labour market, the Committee refers to its assessment on this point under Article 15 of the 1961 Charter.

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

The Committee noted previously (Conclusions XIX-1 (2008) and XX-1 (2012)) that vocational guidance services were provided for students in higher education establishments and at Career Centres for Young People (MCKs) and Mobile Vocational Information Centres (MCIZs), run by volunteer corps (OHP) and answerable to the Ministry of Labour.

According to the Euroguidance database (updated in October 2015, outside the reference period), in addition to the specialist teachers and guidance counsellors in schools, there were 560 psychological and educational guidance centres at local (*powiat*) level providing vocational information and guidance services to young people in the education system, and to their parents and teachers.

According to the report almost 600 guidance counsellors working in schools were able to attend courses held during the reference period by the national centre to support vocational and continuing education (KOWEZIU), in the context of the Euroguidance project. Information on vocational guidance is also available for counsellors on a dedicated website ([www.koweziu.edu.pl](http://www.koweziu.edu.pl)). 5 418 head teachers and teachers assigned vocational guidance tasks in lower secondary schools also attended refresher courses held by the KOWEZIU. The latter also held conferences aimed at employers and representatives of higher education. An Internet portal giving advice on vocational education ([www.doradztwo.koweziu.edu.pl](http://www.doradztwo.koweziu.edu.pl)) and 16 voivodship portals have been set up to disseminate relevant information at regional level.

The report also describes other measures planned for the period from 2013 to 2015, to provide training for teachers and counsellors responsible for vocational guidance. The Committee notes, however, from the report that, following legislative amendments in 2013 (the Law of 13 June 2013 amending the laws on the exercise of certain professions), the professions of placement officer and vocational guidance counsellor are no longer regulated and do not therefore require a professional licence. It asks for clarification in the next report on whether this reform will have an impact on the standard of the qualifications of vocational guidance staff (in schools and on the labour market).

The Committee notes from the report that there are 685.62 full-time equivalent teacher posts given over to vocational guidance and that the number of counsellors in MCKs and MCIZs decreased from 239 posts in 2011 to 137 in 2014. It asks what the reason for this decrease is.

It also asks for clarification in the next report on the number of students concerned. In this connection, the report states that the number of “young learners” benefiting from vocational guidance at MCIZs and MCKs fell from 116 221 in 2011 to 92 266 in 2014. The report also provides other data on the change in the number of persons attending MCIZs and MCKs during the reference period but it is not clear whether these data relate to vocational guidance in the education system or the labour market, or in both, or if they also relate to activities other than vocational guidance. The Committee asks for clearer information on this point in the next report and asks what budget is allocated to guidance activities in the education field.



The Committee points out that updated information must be systematically provided in each report on the vocational guidance systems in all countries, the human and financial resources enlisted, the number of beneficiaries and the measures taken to ensure that information on vocational guidance in the education system is disseminated. In the meantime, it reserves its position on this point.

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

The Committee noted previously (Conclusions XX-1 (2012)) that under the Law on the promotion of employment and labour market institutions, vocational guidance for adults is provided by public employment services, volunteer bodies and career guidance agencies. The report states that, following amendments in March 2014, the organisation of employment offices has been altered and vocational guidance services now also include the active job-seeking assistance service.

According to the report, vocational guidance and information services in the labour market are provided by 340 employment offices at local (*powiat*) level, spread equally over the territory, and 51 information and career planning centres attached to the employment offices at regional (voivodship) level. In each of the 16 voivodships, there are between 11 and 39 *powiat* employment offices and between 1 and 6 information and career planning centres.

The Committee notes the figures in the report showing the rise and fall in the number of beneficiaries of vocational guidance provided by employment offices, which was 312 004 in 2011, 662 898 in 2012, 679 334 in 2013 and 530 046 in 2014. It notes that the number of employment agencies providing guidance services increased from 873 in 2011 to 1374 in 2014, and that the number of counsellors assigned to guidance tasks in *powiat* employment offices and information and career planning centres increased from 1 823 in 2011 to 2 181 in 2014.

The report states that because vocational guidance services form only one of the types of assistance provided by public employment services, it is impossible to state exactly what budgetary resources are allocated to these services. The Committee asks whether it is possible at least to give an estimate.

The Committee asks for the next report to state what information tools (media, brochures, events, etc.) are implemented in the area of vocational guidance in the labour market.

### ***Conclusion***

Pending receipt of the requested information, the Committee concludes that the situation in Poland is in conformity with Article 9 of the 1961 Charter.

## **Article 10 - Right to vocational training**

### *Paragraph 1 - Promotion of technical and vocational training ; access to higher technical and university education*

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

### **Secondary and higher education**

The Committee notes from the report that the Law on the Education System was amended on 19 August 2011 and the vocational education system was modernised with effect from 1 September 2012.

The Committee notes from the report and from Cedefop (Poland: VET in Europe: country report 2014) that since 2012, a modernised version of the Classification of Occupations for Vocational Education (COVE) has been in force. The COVE is developed by the Minister of Education in cooperation with the ministers responsible for other policy domains. To anticipate labour market needs at the development stage, the COVE is subject to consultations with representatives of employers. Employers can also submit applications for entering a new occupation into the COVE.

The institutional and legal solutions adopted in the Polish formal VET system are to meet the requirements of the labour market by ensuring communication with the employers' and employees' organisations. That channel of exchange of information is used both at central level (when defining educational standards, core curricula and quality assurance principles) and local level (when designing the teaching programmes used by VET schools).

In order to prepare for the implementation of the Polish Qualifications Framework (PQF), on February 17, 2010, the Prime Minister appointed an inter-ministerial taskforce for lifelong learning, including PQF. In July 2011, the taskforce adopted the national qualifications system and the PQF. It is envisaged that implementing the PQF will close the cycle of reforms taking place in the institutions of formal general, vocational and higher education, and provide the impetus for developing qualifications attained outside of those systems.

The decision on which occupation shall be offered by a given VET school is made by the school principal in agreement with the local authorities (*poviat government*). To ensure adequacy to the needs of the labour market, the decision of the principal must be made after asking the *poviat* (local) or *voivodeship* (regional) employment council for opinion concerning compliance with the labour market needs.

Implemented in 2012, the core curriculum for vocational education is aimed at improving the link between the vocational education and training offer and labour market needs. It has been developed as a result of the project implemented by the National Centre for Supporting Vocational and Continuing Education (NCSVCE) "Improvement of core curricula as the key for modernisation of vocational education" under the supervision of the Ministry of National Education.

### **Measures to facilitate access to education and their effectiveness**

The Committee notes from Eurydice (Overview, Poland, 2016) that the school education part of the general subsidy from the State budget is the main source of funding for the school education. In school education system, pupils have access to two types of financial support: maintenance-related support (school grants and allowances) or incentive-related support (grants for learning achievements or sporting achievements, scholarships funded by the Prime Minister, scholarships awarded by the Minister of National Education and the Minister of Culture and National Heritage). Many grants are awarded by individuals and legal entities other than local Government units.

Public expenditure on education in 2011 (both state and local government budgets) was equivalent of € 15.04 billion or 3.9% of GDP. The share of the general subsidy transferred to schools via local Governments was € 9.0 billion.

*Conclusion*

The Committee concludes that the situation in Poland is in conformity with Article 10§1 of the 1961 Charter.

## **Article 10 - Right to vocational training**

### *Paragraph 2 - Apprenticeship*

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

The Committee notes from Cedefop (Apprenticeships and work-based learning structured programmes, Poland, 2014) that apprenticeship training is a special type of VET. With few exceptions, two main conditions for enrolment are: completion of lower secondary school (*gimnazjum*) and age (over 16). Apprenticeship training is organised in small and medium enterprises. According to the Chamber of Crafts data, in 2013, 78 440 juvenile workers participated in apprenticeship training in 24,702 enterprises. 76,045 of them were undergoing occupational training. 2,395 young people were trained for a certificate confirming the acquisition of particular skills in occupation. Apprenticeship in crafts is offered in 126 occupations out of which 47 can be gained in the school system.

Agreements between apprentices and employers can be time bound or open-ended. Where the apprentice is attending theoretical training at school, the terms of agreement must be concluded before the start of the school year. If other forms of theoretical training apply, the agreement can be concluded at any time.

According to the report, employers who take apprentices for practical training under a contract concluded with the school, are entitled to reimbursement of expenses incurred, relating to the instructors' wages, clothing and special equipment necessary for the practical training etc.

Employers who engage a young employee with an employment contract with the purpose of vocational training, is entitled to a subsidy for training, provided that he/she is competent to provide vocational training (as defined in the Regulation on Vocational Training) and the young worker has completed an apprenticeship and has succeeded in his/her exam.

In addition, the employer who provides vocational training for young workers can receive a refund of the remuneration paid to young workers and contributions social security. The list of occupations for which the grant for training professional youth workers can be paid is determined by the authorities of voivodship. According to the amendment to the law on employment promotion and labour market institutions Labour, which entered into force in May 2014, has specified that the list of occupations takes into account the occupations included in the classification of occupations. This list is updated annually and takes into account the demands for qualifications and skills of the labour market.

### *Conclusion*

The Committee concludes that the situation in Poland is in conformity with Article 10§2 of the 1961 Charter.

## **Article 15 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement**

### *Paragraph 1 - Education and training for persons with disabilities*

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

Poland ratified the United Nations Convention on the Rights of Persons with Disabilities on 6 September 2012.

### **Definition of disability**

In reply to the question put by the Committee in its previous conclusion (Conclusions XX-I (2012)), the report states that the report on “The institutional, medical and social aspects of disability” (2012), showed the need to improve the quality of systems to assess disabilities for the purposes of pensions and other benefits, which is in line with the work of the Government Plenipotentiary for Disabled Persons to continuously improve the quality of this procedure.

### **Anti-discrimination legislation**

The Committee refers to its previous conclusion (Conclusions XX-I (2012)) on this point and notes that according to the report, there was no change in the Equal Treatment Act (ETA) during the reference period and consequently it still does not cover discrimination on the ground of disability in areas including education and higher education. However, the report does emphasise that the provisions of the ETA on disability are determined by EU legislation (see the report for more details). The report also describes a bill to amend the Law on the implementation of certain EU provisions concerning equal treatment, which would widen the substantive scope of the ETA so that it would then prohibit discrimination on the ground of disability in all areas, including education and higher education. The Committee asks to be kept informed of the progress of this bill.

In its previous conclusion (Conclusions XX-I (2012)), the Committee asked for information on any new relevant case-law and on any complaints to equality bodies. In reply, the report states that the Ministry of Justice does not have such information.

### **Education**

The report points out that a pupil with disabilities may apply for their studies to be extended by one year at each stage in their education. It also states that pupils who are deemed to have special educational needs may attend a secondary school or a post-secondary school up to the age of 24.

The Committee asks for information in the next report on the integration of children with disabilities into primary schools and on whether primary school teachers are trained in special education on the standard teacher training course. It also asks what the success rate is for children with disabilities as regards access to vocational training, further education and finding work in the mainstream labour market.

### **Vocational training**

The Committee notes that several regulations were adopted by the Ministry of Education during the reference period to provide students and graduates with disabilities with appropriate learning conditions, educational assistance and a broader possible choice of profession:

- The Regulation of 23 December 2011 on the classification of professions for which vocational education is provided establishes the professions for which training for persons with disabilities is offered.

- The Regulation of 11 January 2012 on extra-curricular lifelong learning requires course organisers to make the necessary arrangements to enable persons with disabilities to take part in training.
- Under the Regulation of 11 January 2012 on external examinations, persons with disabilities (blind, visually-impaired, deaf or hearing-impaired adults or adults with minor physical or mental disabilities) may sit such examinations under conditions adapted to their disability.

The report gives details of the means of adjusting arrangements for and forms of professional qualification examinations for students or graduates with special educational needs. It also states that public and private colleges receive a grant for creating suitable conditions for undergraduate and research students with disabilities in the education process.

According to the report, undergraduate or research students with disabilities are entitled both to the same grants as students without disabilities (maintenance grants, local education authority grants for the best students, grants for the best students in higher education courses and other awards) and to financial aid in the form of a special grant for persons with disabilities (27 965 beneficiaries in 2011, 27 350 in 2012, 26 123 in 2013 and 25 300 in 2014).

The Committee takes note of the comprehensive statistics provided in the report relating to the vocational training of persons with disabilities. According to the data, the tendency towards inclusive education varies according to the type of establishment (most pupils with disabilities in vocational education attend special schools) and the type of disability. The Committee notes that the number of undergraduate and research students with disabilities was relatively stable during the reference period (28 999 in 2011, 29 203 in 2012, 28 534 in 2013 and 27 778 in 2014).

#### *Conclusion*

The Committee concludes that the situation in Poland is in conformity with Article 15§1 of the 1961 Charter.

## **Article 15 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement**

### *Paragraph 2 - Employment of persons with disabilities*

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

### ***Employment of persons with disabilities***

The report states that in 2014, there were 108 902 persons with disabilities registered as unemployed with a job centre and 17 392 jobseekers with disabilities. Unemployed persons with disabilities account for 6% of the total of unemployed persons in the country. In December 2014, 331 232 persons with disabilities were employed (compared to 357 643 in 2011) and 195 147 of these worked in sheltered employment (compared to 250 986 in 2011) and 136 085 in the open labour market (compared to 106 657 in 2007).

According to the report, the economic activity rate and the employment rate among persons with disabilities is steadily increasing. In the last quarter of 2014, of the 1 919 000 persons with disabilities of working age, 27.4% were engaged in an economic activity (compared to 26.3% in 2011) and 23.7% were employed (compared to 22.1% in 2011). The unemployment rate rose from 16.1% in 2011 to 18.1% in 2013 then decreased to 13.9% in 2014.

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

The Committee refers to its previous conclusion (Conclusions XX-I (2012)) for a description of the 2010 Equal Treatment Act (adopted in 2010 and in force from 1 January 2011 onwards), which prohibits all discrimination based on disability in employment relationships, and the Law on the vocational and social rehabilitation and the employment of persons with disabilities.

In reply to the Committee's question on the relevant case-law, the report describes the judicial decisions at various levels and the complaints before various institutions concerning discrimination in employment on the ground of disability, broken down according to the subject and the year of the complaint. The Committee notes that according to the report, the Office of the Government Plenipotentiary for Equal Treatment received 38 complaints in 2014 for discrimination on the ground of disability, compared to 71 in 2013, 60 in 2012 and 41 in 2011. One case related to a refusal to hire a person in a wheelchair (judgement of the Supreme Court of Poland of 12 April 2012, case no. II PK 218/11, OSNP 9-10, /2013, item 105). Few complaints of unequal treatment on the ground of disability were made to the national labour inspectorate (PIP). In 2013, it was presented with ten cases of discrimination on the ground of disability during recruitment and on dismissal (7 of which were found to be unfounded), five cases of discrimination on the ground of disability when determining wages or other employment conditions and one complaint of no access to vocational training (case pending). On the other hand, the report states that many more complaints of discrimination were submitted to the Ombudsman: 1 097 in 2012 and 305 in 2013.

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

The report points out that Poland has taken several measures relating to equal treatment during recruitment and prohibition of discrimination against persons with disabilities. The reference period saw the adoption or amendment of regulations on the amount of the monthly grant for the employment of a person with a disability, the type of *powiat* tasks which may be financed by the National Fund for the rehabilitation of persons with disabilities, and rehabilitation leave (see the report for more details).

The report mentions the conclusions on discrimination in respect of employment made by the Ombudsman in his report on the implementation of the Convention on the Rights of Persons with Disabilities. The Ombudsman observed that half of professionally

active persons with disabilities engaged in work outside the market offering aid to employment, and are not eligible for support. According to the report, the financial aid system for hiring persons with disabilities is not suited to the current structure of the labour market in Poland. The Committee asks the next report to clarify this point.

Changes were introduced with regard to access to central and local government posts, as a result of which priority was given to candidates with disabilities applying to public bodies in which persons with disabilities accounted for less than 6% of staff (the statutory lower limit) if they had the qualifications required, assessed on an equal footing with other candidates.

According to the report, the Chancellery of the Prime Minister conducted an inspection focusing on respect for the rights of persons with disabilities in selected ministries in 2012. This highlighted the need to increase co-operation between the authorities and the head of the civil service in the area of the employment activation of persons with disabilities in the civil service. The Supreme Audit Office also conducted an audit on the employment of persons with disabilities in the civil service in 2013. The results showed that the rules on the employment of persons with disabilities during recruitment processes were properly applied.

The Committee takes note from the report of the numerous measures and programmes undertaken during the reference period to foster employment and increase labour market participation of persons with disabilities, including: "Computer for Homer 2010", "Active Local Government", "Project support", "Junior – a professional activation programme for graduates with disabilities" and "The Second Programme for the levelling out of differences between regions".

The National Fund for Rehabilitation of Persons with Disabilities (PFRON) supports vocational and social rehabilitation of persons with disabilities through funding, but also through numerous campaigns. During the reference period, PFRON completed 24 projects under its "Human Capital" Work Programme for 2007-2013 (co-financed by the European Social Fund), which were targeted at persons with various disabilities and their environment, including "Support for persons with physical disabilities on the labour market III", "Civil service work placements as a means of supporting the social and vocational integration of persons with disabilities and building a positive image of persons with disabilities on the labour market", "Labour market support for persons aged 45 and over with rare disabilities and certain multiple disabilities", "Support for graduates entering the labour market", "Support for blind persons on the labour market III", "Support for people with disabilities in unhindered access to information and services provided on the Internet II", "Assistance for persons suffering from multiple sclerosis, including those with multiple disabilities, on the labour market" and "Support for persons with genetic diseases".

The report also describes the publications produced during the reference period such as good practice guides and handbooks targeted at various audiences.

The Committee notes from the report that various measures have resulted in improvements to the situation of persons with disabilities on the labour market. Between 2011 and 2014 the employment rate of persons with disabilities of working age rose by 1.6% while their unemployment rate fell by 2.2%.

### *Conclusion*

The Committee concludes that the situation in Poland is in conformity with Article 15§2 of the 1961 Charter.



**Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

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

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

It notes that there have been no changes to the situation, which it previously considered to be in conformity with Article 18§4 of the 1961 Charter (Conclusions XX-1 (2012)). The report confirms indeed that the legislation in Poland does not provide for restrictions to the freedom of movement and, in particular, to the freedom of Polish nationals to engage in gainful employment abroad. In this respect, Section 84 of the Employment Promotion and Labour Market Institutions Act provides that this freedom can be exercised in accordance with the law of the state of employment and international agreements.

*Conclusion*

The Committee concludes that the situation in Poland is in conformity with Article 18§4 of the 1961 Charter.



January 2017

## **1961 European Social Charter**

European Committee of Social Rights

Conclusions XXI-1 (2016)

**UNITED KINGDOM**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the 1961 European Social Charter (the 1961 Charter) and the 1988 Additional Protocol (the Additional Protocol). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure

The following chapter concerns the United Kingdom which ratified the 1961 Charter on 11 July 1962. The deadline for submitting the 35th report was 31 October 2015 and the United Kingdom submitted it on 28 May 2015. On 31 August 2016, a request for additional information regarding Articles 1§2 and 18§3 was sent to the Government which did not submit a reply.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of the thematic group "Employment, training and equal opportunities":

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

17The United Kingdom has accepted all provisions from the above-mentioned group except Article 1 of the 1988 Additional Protocol.

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

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

- the right to just conditions of work – elimination of risks in dangerous or unhealthy occupations (Article 2§4),
- the right to a fair remuneration – limits to deduction from wages (Article 4§5).

The conclusions relating to United Kingdom concern 17 situations and are as follows:

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

In respect of the other 5 situations related to Articles 1§4, 10§3, 10§4, 15§1 and 18§4 the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by The United Kindgom under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

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

#### **Article 15**

- the Children and Families Act 2014 received Royal Assent on 13 March 2014. Part 3 of the Act applies to England only and sets out a new framework for children and young people who have special educational needs and disabilities.

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

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),

- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 4 of the Additional Protocol).

The deadline for submitting that report was 31 October 2016.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

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

### *Paragraph 1 - Policy of full employment*

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

### ***Employment situation***

The Committee notes from Eurostat that the GDP growth rate in the United Kingdom rose from 1.6% in 2011 to 2.6% in 2014, which was well above the EU-28 average (1.4% in 2014).

The employment rate increased from 73.6% in 2011 to 76.1% in 2014 thus being well beyond the EU-28 average of 64.9%.

The employment rate for older workers (aged between 55 and 64) increased from 57.5% in 2009 to 60.9% in 2014 which is significantly higher compared to the EU-28 level (51.8% in 2014). The female employment rate stood in 2014 at 70.5%, for men the employment rate stood at 81.8%.

The unemployment rate decreased from 8.1% in 2011 to 6.3% in 2014 thus being considerably lower than the EU-28 average of 9.8%. The youth unemployment rate decreased from 21.3% in 2011 to 17.2% in 2014. The long term unemployment rate (as a percentage of the active population) decreased from 2.7% in 2011 to 2.3% in 2014.

The Committee notes that the United Kingdom labour market is performing well in comparison with other States Parties. The Committee notes in particular the progress made in tackling the youth unemployment.

### ***Employment policy***

According to the report, the Government's overarching goal is to promote strong, sustainable and balanced growth. In order to do so, the Government took the approach to shift power away from central government to local communities, citizens and independent providers.

One government initiative of 2011 ('Unlocking Growth in Cities,') brought new support for cities allowing them to develop new interventions to tackle long term youth unemployment. Another initiative 'Local Enterprise Partnerships' brought businesses and local authorities together in order to create business development opportunities. Additional initiatives included the 'New Enterprise Allowance' which gives help to unemployed people who want to start their own business or the development of a strategy for increasing ethnic minority employment and participation in the labour market or 'The disability and health employment strategy'.

The Committee requests information in the report on any targeted programmes aimed at reducing the high youth unemployment rate.

As in the previous Conclusion, the Committee requests that information is to be provided on the number of participants in the different labour market programmes or the overall activation rate. The Committee asks information on the next report to be provided on how the employment policies in place are monitored and how their effectiveness is evaluated

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in United Kingdom is in conformity with Article 1§1 of the 1961 Charter.

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

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

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

### **1. Prohibition of discrimination in employment**

The Committee has previously examined the legal framework prohibiting discrimination in employment in its Conclusions XX-1 (2012). It noted that the Equality Act 2010 harmonised the legislation on equality, including the definition of indirect discrimination.

As with other states that have accepted Article 15§2 of the Charter, the Committee will examine the United Kingdom's legislation prohibiting discrimination based on disability under this provision.

The Committee notes from the ILO that the Employment Tribunals and Employment Appeal Tribunal Fees Order 2013 introduced a requirement to pay a fee to initiate proceedings in employment tribunals and that according to the statistics compiled by the Ministry of Justice since the introduction of these fees the number of discrimination claims has dropped considerably (Observation (CEACR)-adopted 2014, published 104<sup>th</sup> ILC session (2015)).

The Committee also takes note of the information provided by the European Equality Law Network reports that according to the above mentioned Fees Order, individuals must pay either £160 or £250 depending on the nature of the claim for issue, followed by £230 or £950 prior to hearing (a total of EUR 500 and 1400 respectively). Discrimination claims are subject to the higher level of charges and remission of fees depends on the disposable capital and income of the claimant. The same reports indicate that since their introduction, tribunal fees have been the subject of repeated judicial proceedings both in England and Wales, as well as in Scotland, but none of these challenges have been successful. The Committee notes that on 11 June 2015 the Lord Chancellor announced a post-implementation review which would "consider how effective the introduction of fees has been in meeting the original financial and behavioural objectives while maintaining access to justice". The Government has indicated that the review will be completed by the end of 2015 ("Employment Tribunal Fees Post Implementation Review", Gov.uk, 11 June 2015). The Committee asks information on the results of such review and any developments on this matter.

The Committee recalls that domestic law must provide appropriate and effective remedies in the event of an allegation of discrimination. Employees who consider that they have suffered discrimination must be able to take their case to an independent body. Since the right to appeal should be fully effective, there should be no obstacles in accessing the courts. The Committee notes that the official statistics show that Tribunal applications fell by 79% in the first six months after fees were imposed (European Equality Law Network), which means that the number of discrimination claims has dropped considerably. In order to assess whether the effectiveness of the right to file a complaint on alleged cases of discrimination as well as to appeal before the employment tribunals is affected by the requirement to pay court fees in employment disputes, the Committee asks information on the nature of the discrimination claims and the amount of fees paid by the claimants (with examples of actual cases) and statistical information on trends in the number of discrimination claims before the employment tribunals. It also asks whether expenses are remitted to those who cannot afford to pay the court fees and in what proportion. Meanwhile, the Committee reserves its decision on this point.

The Committee further notes from the ILO that Section 66 of the Enterprise and Regulatory Reform Act 2013 (ERRA), repealed Section 138 of the Equality Act 2010, which allowed a potential victim of discrimination to submit a list of questions to the potential respondent in order to overcome the difficulties in identifying whether discrimination has occurred. The

same source indicates that the Government expressed its intention to repeal Section 124 of the Equality Act 2010 pursuant to which employment tribunals are able to make recommendations in discrimination cases to benefit the wider workforce and prevent similar discrimination from occurring in future (Observation (CEACR)-adopted 2014, published 104<sup>th</sup> ILC session (2015)). The Committee asks the next report to provide further information on the reasons for the repeal of Section 138 and the possible repeal of Section 124 of the Equality Act 2010. The Committee asks how such changes have affected the procedure in discrimination cases.

The Committee takes note from the ILO that the Enterprise and Regulatory Reform Act 2013 (ERRA) Section 97 amended Section 9 (5) of the Equality Act 2010 in the sense that the Minister must by order provide for caste to be an aspect of race. According to the same source, the Government indicated that preparatory independent research on a possible definition of caste has been concluded and will be submitted to full consultation (Direct Request (CEACR) – adopted 2014, published 104<sup>th</sup> ILC session (2015)). The Committee asks the next report to provide information on any development concerning the inclusion of caste-based discrimination as an aspect of race in Section 9 of the Equality Act 2010. It also asks for examples of cases involving caste discrimination dealt by the employment tribunals. The Committee notes from the reports of European Equality Law Network that in one case brought by a domestic servant who complained, inter alia, that she had been discriminated against because of her race, religion and caste by her employers, the employment tribunal accepted that the claimant had been treated in the manner in which she was treated by the respondents in part because of her caste position. The Employment Appeal Tribunal did not rule that caste was a form of race for the purposes of the Equality Act 2010, rather that aspects of caste overlapped with aspects of race and so the facts of a particular caste-related case may be caught within the Act.

The Committee notes the initiatives taken to promote equality of opportunity and treatment of ethnic minority groups – the programme “Equal Rights, Equal Respect” which also addresses stereotypes regarding ethnic minorities (Government Equalities Office). However, the Committee notes from the progress report on the “Equality Strategy Building a Fairer Britain” that ethnic minorities face greater difficulty to access financial institutions and that measures have been adopted in this respect. The Committee asks the next report to provide information on the measures taken to promote equality of opportunity and treatment of ethnic minority groups in employment.

The Committee previously took note of the recommendations of the Women and Work Commission and asked information on the results of such recommendations (Conclusions XX-1 (2012)). The report indicates that although the Women and Work Commission is no longer in operation, the Government has taken a range of measures to improve women’s position in the labour market, among which ensuring transparency on pay. A voluntary initiative “Think, Act, Report” was launched in 2011 to help improve gender equality in the workforce. It sets out a simple, step-by-step framework to help companies think about key issues such as recruitment, retention, promotion and pay. The report indicates that large companies signed up to this initiative and over 2 million employees are covered by the Think Act Report initiative.

The Committee notes the information provided in the Appendix 1D to the report concerning the role of the Government Equalities Office, the Equality and Human Rights Commission and the Equality Advisory Support Service in the implementation of the Equality Act 2010. The Committee notes that the Equality and Human Rights Commission, which now brings together the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission, monitors and assesses how public bodies comply with the Public Service Equality Duty (PSED) provided for in section 149 of the Equality Act 2010 and has published two reports on this respect. The Committee notes, in particular, that the effectiveness of the PSED is currently under review. It asks the next report to provide information on the results of such review.



The Committee asks that the next report provide information on the activities and measures taken by Government Equalities Office, the Equality and Human Rights Commission and the Equality Advisory Support Service with a view to eliminate discrimination in employment and to promote equality of opportunities and equal treatment including for specific minority groups. It requests that the next report provide information on any claims related to discrimination in employment, including the grounds of discrimination addressed as well as any remedies provided or sanctions imposed.

The Committee notes that the Equality Act 2010 is not applicable in Northern Ireland. It further notes that a formal consultation on a new revised Racial Equality Strategy for Northern Ireland (entitled “A Sense of Belonging – Delivering Social Change through a Racial Equality Strategy for Northern Ireland 2014–24”) was launched between 19 June and 10 October 2014. The consultation seeks views on, among other matters, the need for reform of race legislation in Northern Ireland and the proposals put forward by the Equality Commission, including the provision of increased protection against discrimination and harassment on the grounds of colour and nationality across the scope of the race equality legislation (Observation (CEACR) – adopted 2014, published 104th ILC session (2015)). The Committee requests the next report to provide information on the results of the consultation launched in 2014 concerning the Racial Equality Strategy for Northern Ireland, as well as on the specific legislative measures adopted by the Office of the First Minister and deputy First Minister to address discrimination and the promotion of equality of opportunity and treatment in employment.

As for the Isle of Man, the report indicates that in 2014 the Government’s Cabinet Office brought forward a new Equality Bill which is based, with some modifications, on the United Kingdom’s Equality Act 2010. The Bill is intended to provide comprehensive protection against any discrimination in both employment and the provision of goods and services on the following grounds: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The Committee notes that the consultation process has already taken place, but the new Equality Bill has not been adopted yet. It asks information on any developments on this matter in the next report.

As regards discrimination on grounds of nationality, the Committee recalls that States Parties cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G of the Charter, namely when the jobs at issue are inherently connected with the protection of the public interest or national security and involve the exercise of public authority (Conclusions 2006, Albania). In light thereof, the Committee asks the next report to provide detailed information on the restrictions applicable, if any, to foreign nationals’ employment rights. It reserves in the meantime its position on this point.

The Committee asks that the next report provide information on positive measures/actions for combating all forms of discrimination in employment.

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

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

The report states that, according to the most recent statistics, 9 900 inmates are currently working in prison in industrial workshops run by the National Offender Management Service (NOMS), with around 2 000 more employed by subcontractor enterprises. These figures do not include the considerable number of inmates performing other activities to ensure the proper functioning of the prison, such as cooking and serving meals, maintenance and cleaning. Inmates are also paid for their participation in purposeful activity, defined as any activity organised as part of work, integration, education, training or offending behaviour programmes.

Around 500 inmates are currently engaged in paid employment outside prison, mostly in small local businesses. In principle, persons authorised to work for outside enterprises have

to receive the same salary for similar work and be employed under the same conditions as their non-inmate co-workers, and must pay National Insurance (social security) contributions and tax.

The government continues to implement a series of regulations to prevent abuse against inmates. By applying these regulations, it ensures that inmates' work, in both the public and private sectors, is subject to rigorous and independent inspection by national and international bodies.

Under the Management of Offenders Act 2007, unpaid work in the community undertaken by offenders can be managed by the private sector. The work is subject to the mandatory instructions and guidelines issued by NOMS, which ensures that the personal integrity of offenders is respected. Unpaid work is supervised by Her Majesty's Inspectorate of Probation, an independent service funded by the Ministry of Justice, which reports directly to the Secretary of State as regards the effectiveness of work carried out with adult and juvenile offenders.

The Committee requests that the next report contain relevant information on the pay, conditions of employment and social protection of inmates working within prisons.

### ***Domestic work***

In England and Wales the Modern Slavery Act 2015 completes the existing legislation presented in the previous report. This law, adopted outside the reference period, regroups offences relating to trafficking and slavery. It creates two new Civil Protection Orders for the prevention of modern slavery and a Commissioner in charge of combating this phenomenon. It also deals with the protection of victims. In addition, the government is also introducing non-legislative measures, such as the adoption of a strategy to fight against modern slavery and evaluation of the support offered to victims. It has also instructed the National Crime Agency (NCA) to prioritise actions aimed at countering this problem. In November 2014 a review of the National Referral Mechanism for victims of human trafficking (NRM) led to a recommendation to revise the victim identification and support system. The report states that in 2014 there were 2 340 potential victims of trafficking made known to the NRM, of whom 234 were victims of domestic slavery (200 women and 34 men). In addition, 71 children (48 girls and 23 boys) were referred to the NRM on the same ground.

The United Kingdom Government is taking steps to strengthen protection for vulnerable domestic workers. This entails specific training for immigration and border control staff, measures to ensure that foreign national domestic workers are given information concerning their rights, and how to get help, before and after they enter the United Kingdom, and awareness-raising targeting employers. The government is also testing a pocket card scheme. These cards, summarising employment rights and offering telephone assistance in case of emergency, are to be issued to foreign national domestic workers when entering the country. This is in addition to the brochure setting out their rights (in several languages) that is already provided at the time of visa applications. The brochure also contains information on access to telephone support and on relevant organisations that provide advice and assistance.

In the United Kingdom foreign national domestic workers are entitled to change employers in the event of abuse. If they notify the competent authorities, victim assistance and support will be granted to them. The government also plans to undertake a study to find ways to prevent modern slavery among this group of workers.

In March 2011 the Welsh Government created an Anti-Slavery Coordinator and, in January 2013, the Anti-Slavery Leadership Group was put in place with a view to implementing preventive measures against the exploitation of workers.

In Northern Ireland the Human Trafficking and Exploitation Act 2015 applies in this area. This law defines slavery, servitude and forced or compulsory labour as a criminal offence.

Such offences are prosecuted on indictment only and are liable to a maximum penalty of life imprisonment.

The report mainly provides information on legislative and practical measures taken outside the reference period. The Committee requests that the next report provide information on the results of these measures, particularly with reference to the General Questions about the existence of forced labour within the family (Conclusions XX-1/2012).

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

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

The Committee examined the legislation on respect for minimum period of service in the Armed Forces in the United-Kingdom in Conclusions XX-1(2012). It asks that the next report include updated information on this issue.

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

According to the report, the situation in the United Kingdom corresponds to the conditions laid down in the Council of Europe's "Guide to the concept of suitable employment in the context of unemployment benefits". The recipient of unemployment benefit is, in principle, entitled to reject a job offer that does not correspond to his or her customary occupation during an initial 13-week period ("permitted period"). This is not an absolute guarantee, as decisions are made on a case-by-case basis, depending on circumstances.

The Committee recalls that, each time the relevant authorities decide on the permanent withdrawal or temporary suspension of unemployment benefit because the recipient has rejected a job offer, this decision must be open to review by the courts in accordance with the rules and procedures established under the legislation of the state which took the decision (Statement of Interpretation of Article 1§2, Conclusions XX-1/2012). It is requested that the next report provide updated information on this point.

#### ***Privacy and work***

According to the report, workers' privacy is protected by the Data Protection Act 1998. The Information Commissioner's Office has published guidance and advice on issues related to employment on its website.

The Committee recalls that the right to freely undertaken work includes the right to be protected against invasion of privacy. The report does not provide information on this point. The Committee requests that the next report contain information about measures taken by the state to ensure that employers give due consideration to workers' private lives in the organisation of work and that all interferences are prohibited and where necessary sanctioned (Statement of Interpretation of Article 1§2, Conclusions XX-1/2012).

Pending receipt of the information requested, the Committee considers that, as regards the prohibition of forced labour and other aspects of the requirement to accept the offer of a job or training, the situation in the United Kingdom is in conformity with Article 1§2 of the 1961 Charter.

#### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in the United Kingdom is in conformity with Article 1§2 of the 1961 Charter.

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

### *Paragraph 3 - Free placement services*

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

In its previous conclusion (Conclusions 2012), while finding the situation in the United Kingdom in conformity with Article 1§3 of the 1961 Charter, the Committee asked for the next report to provide a number of clarifications in respect of the work of Jobcentre Plus, namely: (i) the number of placements made as a percentage of the vacancies notified to it, (ii) the number of staff concerned with placement activities, and the ratio of placement staff to registered jobseekers, and (iii) how it co-ordinates work with the private employment services.

Concerning Great Britain, the report indicates that Jobcentre Plus ceased to have legal status as an agency from October 2011 and is now an integral part of Department for Work and Pensions (DWP). DWP is continuing to modernise the way Jobcentre Plus delivers its services and has given more responsibility to Jobcentre Plus advisers to assess the individual needs of people and offer the support they think is best. Jobcentre Plus has been delivering a personalised service to best meet the needs of the claimant and the local labour market through different programmes targeting in particular long-term unemployed and young unemployed persons.

The report further indicates that, the Universal Jobmatch went live in November 2012. This is the Department's online job posting and matching service for jobseekers and employers, and it has revolutionised the way jobseekers find suitable job vacancies. Between its launch in November 2012 and 31 March 2014, around 390,000 employers opened a Universal Jobmatch account. On average, there are up to 1 million live vacancies at any one time and an average of 4,5 million daily job searches. Jobseekers who wish to return to work through self-employment are helped by the New Enterprise Allowance. Between April 2011 and December 2013, over 40,000 new businesses were supported by the Allowance.

From the Vacancies Dataset, source of the Office for National Statistics (<http://www.ons.gov.uk/ons/rel/lms/labour-market-statistics/november-2014/dataset--claimant-count-and-vacancies.html>), it is to be noted, that in December 2011, there were 465,000 vacancies for 2,684,000 jobseekers, with a number of unemployed person for vacancy of 5,8; in December 2012 there were 502,000 vacancies for 2,536,000 jobseekers, with a number of unemployed person for vacancy of 5,1; in December 2013 there were 573,000 vacancies for 2,359,000 jobseekers, with a number of unemployed person for vacancy of 4,1; in December 2014 there were 709,000 vacancies for 1,875,000 jobseekers, with a number of unemployed person for vacancy of 2,6. However, the report does not provide the placement rate, that is placements made by the public employment services as a share of notified vacancies to the public employment services, thereby the Committee asks again the next report to provide it for every year of the reference period.

As regards to the services staff, in Great Britain there are 714 Jobcentres and 29,715 Jobcentre Plus Work Services front line staff concerned with placement activities. The report does not indicate the ratio of placement staff to registered jobseekers and the Committee reiterates its request.

In the previous conclusion, the Committee also asked how Jobcentre Plus co-ordinates work with the private employment services. In this respect, the report indicates that the Universal Jobmatch service, is a free service available to all employers and recruiters in the UK, including private employment and recruitment services. An important indicator of this coordination to be provided in the next report is the respective market shares of public and private services (market share is measured as the number of placements effected as a proportion of total hirings in the labour market).

As the [Department for Work and Pensions](#) doesn't cover Northern Ireland, the report indicates that the Department for Employment and Learning's Employment Service in Northern Ireland delivers many of its programmes and initiatives through a network of 35 Jobs and Benefits offices and JobCentres. The Committee asks the next report to provide the following information concerning Northern Ireland: (i) the placement rate (i.e. placements made by the employment services as a share of notified vacancies), the number of employment services staff in relation to the number of job seekers, and the respective market shares of public and private employment services.

The Committee also notes from the report that ministers and officials continue to meet regularly with union representatives, employers' organisations and other stakeholders, and their views are sought in formal consultations.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in United Kingdom is in conformity with Article 1§3 of the 1961 Charter.

**Article 1 - Right to work***Paragraph 4 - Vocational guidance, training and rehabilitation*

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

As the United Kingdom has accepted Article 9, 10§3 and 15§1 of the 1961 Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to vocational guidance and training for persons with disabilities are examined under these provisions.

The Committee considered the situation to be in conformity with the 1961 Charter as regards measures relating to vocational guidance (Article 9).

It deferred however its conclusion as regards measures concerning vocational training and retraining of workers (Article 10§3) and as regards training for persons with disabilities (Article 15§1). For the same reasons, the Committee defers its conclusion on Article 1§4.

*Conclusion*

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

## **Article 2 - Right to just conditions of work**

### *Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations*

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

The Committee takes note of the information submitted by the United Kingdom in response to the conclusion that it had not been established that workers exposed to occupational health risks, despite the existing risk elimination policy, were entitled to appropriate compensatory measures (Conclusions XX-3 (2014), United Kingdom).

Article 2§4 requires States Parties to ensure some form of compensation for workers exposed to residual risks that cannot be or have not yet been eliminated or sufficiently reduced either in spite of the effective application of the preventive measures referred to above or because they have not yet been applied (Conclusions 2005, Statement of Interpretation on Article 2§4). Article 2§4 mentions two forms of compensation: reduced working hours and additional paid holidays. In view of the emphasis in this provision on health and safety objectives, however, other measures of reducing exposure time may also ensure conformity with the Charter. The relevance and adequacy of such measures are assessed on a case by case basis (Conclusions XX-3 (2014), Germany).

The report states that the Government continues to disagree with the Committee's conclusions on Article 2§4. The approach taken by the United Kingdom is explicitly focused on reducing exposure to occupational health risks in line with a set of principles enshrined in legislation. In the Government's view, the approach adopted by the United Kingdom presents the potential for higher levels of risk control than simply focusing on reducing the time of exposure to the risk or by providing additional leave once the workers have been exposed to risks to their safety or health at work.

The Committee previously noted the approach adopted by the United Kingdom and the absence of specific rules that create an obligation to protect workers who are exposed to residual risk (Conclusions XX-3). On this basis it considers that the situation is in breach of the Charter.

### *Conclusion*

The Committee concludes that the situation in United Kingdom is not in conformity with Article 2§4 of the 1961 Charter on the ground that workers exposed to residual occupational health risks, despite the existing risk elimination policy, are not entitled to appropriate compensatory measures.

## **Article 4 - Right to a fair remuneration**

### *Paragraph 5 - Limits to deduction from wages*

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

The Committee takes note of the information submitted by United Kingdom in response to the conclusion that it had not been established that the limits on deductions from wages equivalent to the National Minimum Wage are reasonable (Conclusions XX-3 (2014), United Kingdom).

Article 4§5 guarantees workers the right to their wage being subject to deductions only in circumstances which are well-defined in a legal instrument (law, regulation, collective agreement or arbitration award). Any such deductions must be subject to reasonable limits and should not *per se* result in depriving workers and their dependents of their means of subsistence (Conclusions XI-1 (1991), Greece).

The report states that under the applicable law, there are limited circumstances in which deductions can be made which would bring wages below the level of the minimum wage. The main exception to this is where an employer provides accommodation to a worker. From 1 October 2014, the amount which can be deducted for accommodation provided by the employer is £5.08 per day or £35.56 a week. Under the National Minimum Wage Regulations 1999, there are certain other limited situations where deductions from wages can be made even where these would bring wages below the level of the minimum wage. Unlike the accommodation offset these deductions do not have a limit for how much can be deducted. According to the report it would be very difficult for a central body to set limits for these areas.

While acknowledging that the situations are restricted in scope and notwithstanding the Government's claim that limits are difficult to set, the Committee considers that the absence of adequate limits to deductions that may be made to wages paid at the level of the national minimum wage (deductions related to penalties, advance of wages, purchase of shares or securities, accidental overpayment, etc.) is contrary to the Charter as it may result in depriving workers and their dependents of their means of subsistence.

### *Conclusion*

The Committee concludes that the situation in United Kingdom is not in conformity with Article 4§5 of the 1961 Charter on the ground that the absence of adequate limits on deductions from wages equivalent to the National Minimum Wage may result in depriving workers and their dependents of their means of subsistence.



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

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

The Committee previously noted (Conclusions XVI-2 (2004)) that vocational guidance is provided free of charge without discrimination to the nationals of other Contracting Parties to the 1961 European Social Charter and the Revised Charter who are lawfully resident or regularly working in the United Kingdom. Any differential treatment of foreigners in this respect would contravene the Equality Act 2010.

As regards measures concerning vocational guidance of people with disabilities, both within the education system and the labour market, the Committee refers to its assessment under Article 15 of the Charter.

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

The Committee previously noted that vocational guidance is organised differently in England, Scotland, Wales, Northern Ireland and the Isle of Man. In particular:

- In England, under the Education Act 1997 (as amended in 2011), schools are required to provide independent careers guidance for pupils (aged 13 to 16) in years 9-11 on the full range of options, including apprenticeship. From September 2013, this duty was extended to pupils (aged 12 to 18) in years 8-13 to help more young people get the advice they need at key transition points. The Department for Education has issued statutory guidance and good practice for schools and, in December 2014, has announced the creation of a new, employer-led, independent, careers and enterprise company, which is expected to forge strong partnerships between schools, colleges, employers and other organisations to ensure the best advice and inspirational opportunities are being offered. The report furthermore mentions a series of initiatives taken in England by the Department for Education and the Department for Business, Innovation and Skills in favour of people aged more than 16 years old, including as regards careers guidance.
- In Northern Ireland, the Careers Service delivers careers information, advice and guidance in all post-primary schools through formal partnership arrangements.
- In the Isle of Man, the Department of Education and Children (DEC) works closely with the Department of Economic Development (DED) in respect of providing careers guidance to young people by allowing access to secondary schools and Isle of Man College for the careers advisers' service. The DEC organizes, on behalf of the DED, the annual Employment and Skills Event held each November. This event is open to all secondary schools and the Isle of Man College as well as members of the public. The event brings together a range of Isle of Man employers and enables the young people to find out the opportunities for training which are available.
- The report does not provide information as regards vocational guidance provided within the education system in Scotland and Wales. The Committee asks whether careers guidance is provided within the educational system by Skills Development Scotland and Careers Wales respectively (see below) and what specific guidance initiatives are taken in this respect. It also asks the next report to describe the legal basis, functioning, expenditure, staffing and number of beneficiaries respectively involved in the provision of careers guidance within the education system in Scotland and Wales.

The Committee asks that updated information be regularly provided in each report on the measures taken in respect of vocational guidance within the education system throughout the United Kingdom, in particular the financial and human resources involved, the number

of beneficiaries covered and the measures taken to ensure dissemination of information as regards vocational guidance within the education system.

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

As noted above, the provision of vocational guidance is organised differently in England, Scotland, Wales, Northern Ireland and the Isle of Man:

- In England, the National Careers Service, set up in 2012, provides advice on learning, training and employment for young people and adults in one place. Information is available online, but is also offered face-to face and by phone. In 96% of Jobcentres the National Careers Service is co-located. A National Careers Council (NCC) composed of ten members and 3 associate leading experts from business, education and careers sectors was established in 2012 by the Skills Minister to advise government on improving careers provision for young people and adults in England. The report also refers to schemes available to jobseekers during the reference period under the Jobseekers Act 1995 and the Employment and Training Act 1973, in particular the "Work Programme", a Government's scheme addressed in particular to individuals at risk of long-term unemployment.
- In Scotland, information and guidance on courses and careers are provided by Skills Development Scotland (SDS) since 2008; the Committee takes note of the information provided in the report about the Scottish Government's career information, advice and guidance strategy published in 2011 and the "Opportunities for All" commitment introduced in 2012.
- In Wales, vocational guidance in the labour market is provided by Careers Wales.
- In Northern Ireland, careers guidance services are delivered by the Careers Service Northern Ireland; the Committee takes note of the information provided in the report about the ongoing review of the "Preparing for Success" strategy published in 2009 in Northern Ireland. It also notes that Careers information and support, delivered by professionally qualified careers advisers, is available online, as well as in Careers Resource Centres/Offices, Jobs and Benefits Offices and Job Centres throughout Northern Ireland.
- In the Isle of Man, the Employment & Skills Group, which is part of the Department of Economic Development, provides an all age vocational guidance service. Careers and Employment advisors provide a range of impartial information, advice and guidance with regard to education or employment options. They facilitate referrals to other agencies as appropriate and can access support from both Government and external agencies. According to the report, Careers advisors are professionally qualified. Guidance is provided both within the JobCentre and around the Island at secondary schools and the Isle of Man College. Advice and guidance is also provided in the Isle of Man Prison.

The Committee asks the next report to provide updated information on the initiatives taken throughout the country to ensure access to vocational guidance in the labour market, including the respective legal basis for the provision of such guidance and the means deployed to disseminate information on vocational guidance.

As regards expenditure, staffing and number of beneficiaries, the Committee notes from the report that:

- In Scotland, as of 31 December 2014, the number of Full Time Equivalent careers staff working with SDS was 689.87; SDS delivered 171,324 Career Information, Advice and Guidance engagements for 80,283 individuals through a mix of groups and one-to-one support in 2013-2014.
- In Northern Ireland, the expenditure was £ 5,524,011 (6,750,100€) in 2011-2012, £5,788,069 (€6,931,990) in 2012-2013 and £5,410,450 (€6,912,990) in 2013-

2014; the number of Full Time Equivalent staff within the Department for Employment and Learning's Careers Service was 158.61 (January 2015); the number of interventions (initial and subsequent careers guidance interviews with young people and adults, workshops, group sessions, telephone calls etc.) was 628,261 between 1/04/2010 and 26/09/2014 (approximately 157,000 per year).

- In the Isle of Man, vocational guidance is provided by a team of 4 full-time equivalent staff. Direct spending in this area is approximately £250,000 (€319,428) per annum.
- No information is provided as regards the situation in England and Wales.

The Committee asks that updated information be regularly provided in each report on the measures taken in respect of vocational guidance in the labour market throughout the United Kingdom, in particular the financial and human resources involved and the number of beneficiaries covered.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in the United Kingdom is in conformity with Article 9 of the 1961 Charter.

## **Article 10 - Right to vocational training**

### *Paragraph 1 - Promotion of technical and vocational training ; access to higher technical and university education*

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

### **Secondary and higher education**

The Committee recalls that under Article 10§1 of the Charter the States Parties must:

- ensure general and vocational secondary education, university and non-university higher education and other forms of vocational training;
- build bridges between secondary vocational education and university and non-university higher education;
- introduce mechanisms for the recognition/validation of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general, technical and university higher education;
- take measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market.

According to the report the age of compulsory participation in education or training was raised and pupils who left year 11 in 2014 were the first cohort required to continue until at least their 18th birthday. Young people can choose vocational or academic options and they can participate through full-time education, a job or volunteering combined with part-time study or by undertaking an apprenticeship or traineeship.

The Committee takes note of an independent review of vocational education, commissioned by King's College and carried out in 2011. As a result of the recommendations issued, a number of measures were implemented. All 16-19 years olds in education are now offered a study programme based on their prior attainment, education and employment goals. Sixth Forms and Further Education Colleges are funded on a per student basis, giving education providers the freedom to design programmes which best meet student's ambitions. Students studying vocational subjects can take substantial technical and applied qualifications and other activities including work experience.

According to the report, since 2013 all 16-19 olds have been following a study programme with clear study and/or employment goals. Study programmes include substantial qualifications, a traineeship or extended period of work experience and employment preparation. The study programme principles are intended to enable all students to take a programme that helps them progress to their next stage whether it be employment, training or further study, including entry into higher education. Traineeships for 16-18 year olds include a high quality work placement and are at heart of the Government's drive to tackle youth unemployment. Traineeships had 10,400 young people aged 16-23 participating in the first year. From March 2014 young people on benefits have been able to study for more than 16 hours per week on a traineeship and from August 2014 traineeships became available to 24 year olds.

As regards vocational qualifications, students aged 14-16 can choose from a variety of high quality, vocational and technical qualifications. Lists of technical qualifications for key stage 4 education were published in 2012, 2013 and 2014.

In Scotland the Scottish Executive Employability Framework recognises the need to ensure that the skills of people are matched with current and future employment opportunities. Skills Development Scotland's Careers Service also plays a key role in vocational programmes.

The Committee asks what measures are taken to make vocational education qualifications relevant from the perspective of professional integration in the job market.

### ***Measures to facilitate access to education and their effectiveness***

According to the report, in order to support the introduction of study programmes, funding is allocated per student rather than per qualification. The number of 16 year olds participating in full-time programmes increased from 373,100 to 477,900 in 2014. Overall proportion of students studying at least one A level rises with age, from 79% for 16 year olds to 96% for 18 year olds.

The Committee also takes note of the numbers of students studying English and mathematics aged 16-18 years at A levels. In 2013 the Government announced a £30 million two-year package of support for the further education to encourage improved teaching and learning. It includes bursaries to attract more graduate teachers into further education and professional development programmes.

The Committee wishes to know the total spending on vocational education as a percentage of the GDP.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in United Kingdom is in conformity with Article 10§1 of the 1961 Charter.

## **Article 10 - Right to vocational training**

### *Paragraph 2 - Apprenticeship*

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

The Committee notes that a number of changes were introduced to the apprenticeship programme. The pay arrangements have been strengthening by bringing them within the National Minimum Wage framework. New measures were introduced in 2011 focusing on three priorities to raise standards and safeguard quality, to simplify and speed up processes for employer and to increase focus where returns are greatest. The Government also introduced a new financial incentive to help SMEs take on a first apprentice aged 16-24.

The Committee takes note of the review of apprenticeships and the reform implementation plan aiming at, among others to reform apprenticeships to be more rigorous and responsive to the needs of employers.

According to the report over 1000 employers are involved in over 75 sectors with 73 standards approved and published and more than 100 new standards in development.

The Committee asks what is the length of the apprenticeship and division of time between practical and theoretical learning.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in United Kingdom is in conformity with Article 10§2 of the 1961 Charter.

## **Article 10 - Right to vocational training**

### *Paragraph 3 - Vocational training and retraining of adult workers*

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

#### ***Employed persons***

In its previous conclusion (Conclusions XX-1 (2012) the Committee asked for up-dated information on the organisation and implementation of continuing vocational training for employed persons, including relevant figures such as the percentage of employees participating in training. The Committee takes note of the provisional data for 2014-2015 academic year, which show that 1,396,100 adult learners aged 19 and over participated in Government-funded further education. 573,700 funded Apprentices participated on an Apprenticeship in the first quarter of the 2014/15 academic year.

According to the report, the Department for Business Innovation and Skills (BIS) contributed £ 210 million a year to support community learning (adult learning). In 2013/2014 657,200 learners participated in Community Learning courses. The budget is managed by the Skills Funding Agency. Courses are designed to help people of different ages and backgrounds acquire new skills, re-connect with learning, pursue an interest, prepare for progression to formal courses.

The overall 2013/14 education and training success rate for government funded adult learners was 87.6%. The overall 2013/14 apprenticeship success rate was 68.9% .

The Committee further notes from Cefedop (On the way to 2010: data for vocational education and training policies. Country statistical overview, 2015) that the percentage of adults participating in lifelong learning in 2013 was 16.1%, which is higher than the corresponding EU average. The UK also has a higher percentage of employees participating in on-the-job training (30% compared to the EU average of 20%) .

#### ***Unemployed persons***

The Committee recalls that Article 10§3 requires the States to provide labour market training for the unemployed and provide information on the activation rate – i.e. the ratio between the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures. 10§3 takes into consideration only those activation measures for unemployed people that strictly concern training.

The Committee notes from Cefedop (VET in Europe, Country Report) that following the Welfare Reform Act 2012, the UK Government began introducing changes to the benefit system in 2013 so that it pays more to work than to stay on benefits. Further initiatives include modernising the Jobcentre Plus services and creating closer links with local authorities, employers and providers. In England, Scotland and Wales the Youth Contract provides opportunities (such as apprenticeships, work experience and support) to young unemployed people as well as wage incentives to employers.

The Committee asks the next report to provide information about the labour market training and retraining measures specifically for unemployed persons, as well as the numbers participating and the activation rate. The Committee considers that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity.

The Committee asks the next report to provide information about the legislation on individual leave and its remuneration. It wishes to know how the the burden of the cost of vocational training is shared among public bodies, unemployment insurance systems, enterprises and households as regards continuing training.

*Conclusion*

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



## **Article 10 - Right to vocational training**

### *Paragraph 4 - Encouragement for the full utilisation of available facilities*

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

### **Fees and financial assistance**

In its previous conclusion (Conclusions XX-1 (2012)) that Committee found that the situation was not in conformity with the Charter as nationals of other States Parties who are not EEA nationals, residing or working lawfully in the United Kingdom were not treated on an equal footing with the United Kingdom nationals with respect to fees and financial assistance for higher education.

The Committee notes from the report that students studying undergraduate courses who have been designated for student support may apply for tuition fee assistance in the form of a non-means tested loan. Additionally students can apply for a means-tested loan and grant to help with their living costs.

Eligibility for financial support for higher education courses is determined by Student Finance England (SFE) using the Education (Student Support) Regulations 2011.

From academic year 2012, eligible part-time undergraduate students and those studying by distance learning can apply for a subsidised loan to cover the cost of tuition.

As regards eligible categories for the regulated or home rate of fees, a tuition fee loan and maintenance support, students must have been ordinarily resident in the UK and Islands for the three years immediately preceding the first day of the first academic year of the course, other than wholly or mainly for the purpose of receiving full-time education.

There are exceptions to this as follows:

- In accordance with Article 24, paragraph 1 of Directive 2004/38/EC, all EU students pay the same tuition fee and can apply for the same tuition fee support as the nationals of the hosting EU country. Thus, EU nationals (or their family member) who have lived in the EEA, or Switzerland, throughout the three years immediately before the start of the first academic year of the course, can apply for a tuition fee loan and are charged the same regulated rate of fee as a national student. As regards maintenance support, following a judgment on the Bidar case (C-209/03) in 2005, the European Court of Justice (ECJ) concluded that maintenance support also falls within the scope of the EC treaty. The ECJ supported a residence condition as acceptable to establish a genuine link with another Member State and eligibility for maintenance support. Therefore, as with home students, EU nationals who have lived in the UK and Islands for three years prior to the start of their course can apply for all aspects of maintenance support.
- European Economic Area (EEA) workers, frontier workers, self-employed persons, persons who retain such status and members of their families are eligible to apply for the full support package if they have been ordinarily resident in the EEA and Switzerland throughout the three years immediately preceding the first day of the first academic year of the course.

“Visa” nationals, that is those who do not have the right of free movement and who require an entry visa and a work permit to stay for over six months, may be charged fees above the capped rate and may not be eligible for financial assistance for their studies. Non-EU/EEA Charter nationals do not have the right to freedom of movement as workers, as is guaranteed by Article 45 TFEU (ex Article 39 of the Treaty establishing the European Community).

The Committee also notes from the Governmental Committee Report (§§ 111-114) that to receive a student loan, tuition fee support and other supplementary grants, students must normally be able to satisfy three requirements relating to their residence and immigration status on the first day of the first academic year of their course. They must be settled in the UK, in other words ordinarily resident without being subject under the immigration laws to any restriction on the period for which they may stay. They must be ordinarily resident in the UK and they must have been ordinarily resident throughout the three-year period preceding that date, other than wholly or mainly for the purpose of receiving full-time education. This applies equally to UK nationals on return to the UK following a period of residence abroad.

The Committee recalls that under Article 10§4 of the Charter equality of treatment as regards access to financial assistance for studies shall be provided to nationals of other States Parties lawfully resident in any capacity, or having authority to reside by reason of their ties with persons lawfully residing, in the territory of the Party concerned. Students and trainees, who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training are not concerned by this provision of the Charter. Article 10§5 does not require the States Parties to grant financial aid to any foreign national who is not already resident in the State Party concerned, on an equal footing with its nationals. However, it requires that nationals of other States Parties who already have a resident status in the State Party concerned, receive equal treatment with nationals in the matters of both access to vocational education (Article 10§1) and financial aid for education (Article 10§4).

Those States Parties who impose a permanent residence requirement or any length of residence requirement on nationals of other States Parties in order for them to apply for financial aid for vocational education and training are in breach of the Charter.

The Committee asks the next report to confirm that to be eligible for student loans and tuition fee support, both UK nationals and non-EEA nationals, who are legally entitled to enter and reside in the UK, must be ordinarily resident in the UK throughout the three-year period, on an equal footing. In the meantime, the Committee reserves its position on this issue.

### ***Training during working hours***

The Committee notes that there have been no changes to the situation as regards training during working hours.

### ***Efficiency of training***

The Committee asks what measures are taken to evaluate vocational training programmes for young workers, including the apprenticeships. In particular, it wishes to be informed of the participation of employers' and workers' organisations in the supervision process. The Committee notes that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

### ***Conclusion***

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

## **Article 15 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement**

### *Paragraph 1 - Education and training for persons with disabilities*

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

According to the Department for Work and Pensions, the percentage of people in the United Kingdom with disabilities differs according to the age group: in 2013-2014, some 7% (0.9 million) of children under 18 years of age have disabilities compared to 16% of working age (18-64) adults and 42% of adults who have reached the legal age for retirement (since 6 April 2010, women are entitled to a state pension as from their 65th birthday). According to the UK Department for Work and Pensions, some 800 000 young people (6%) in the United Kingdom are born with a disability or become disabled during childhood. 2.1 million (11%) people under 25 years of age have a long-term illness.

The Committee notes that the United Kingdom ratified the UN Convention of 8 June 2009 on disability rights and its optional Protocol on 7 August 2009.

### **Definition of disability**

The Committee refers to its previous conclusion (Conclusions XX-1 (2012)) for the definition of disability, which has not changed during the reference period.

### **Anti-discrimination legislation**

The Committee refers to its previous conclusion (Conclusions XX-1 (2012)) for a description of the anti-discrimination laws in Great Britain and Northern Ireland, which remain unchanged.

In Scotland, since 18 March 2011, the Additional Support Needs Tribunal for Scotland, established in 2005, also examines appeals by parents or persons who have the capacity to lodge a complaint against a body responsible for discrimination on grounds of a disability. According to the Tribunal's annual reports, it received 6 requests in 2011/2012, 18 in 2012/2013 and 12 in 2013/2014. The Special Educational Needs and Disabilities Tribunal in Northern Ireland received 81 requests in 2011/2012, 102 in 2012/2013 and 121 in 2013/2014.

In its previous conclusion (Conclusions XX-1 (2012)), the Committee asked to be informed in the next report of any progress made in legislation to prevent discrimination on grounds of disability in the Isle of Man. The report explains that the Government of the Isle of Man no longer intends to bring the Disability Discrimination Act 2006 into operation as it would have dealt with discrimination on the grounds of disability in the provision of goods and services, but not in employment. In 2014, the Government of the Isle of Man presented a new equality act based on the UK Equality Act 2010 which will deal with discrimination in both employment and the provision of goods and services on various grounds including disability. This law should come into force in 2015. The Committee asks that the next report provide all the necessary information on this subject.

### **Education**

The report states that in England, study programmes apply to all students aged 16-19 including learners with learning difficulties and/or disabilities. In January 2014 some 232 200 (2.8%) pupils across all schools in England had special educational needs. 46.3% were placed in mainstream schools while 44.4% were placed in special schools. The number of pupils with special educational needs but without the corresponding statement of needs had dropped from 1 470 900 in 2010 to 1 260 760 in 2014.

According to the report, Scotland there were 2,056 primary school, 364 secondary schools and 149 special schools in 2013. The total number of pupils was 673 530, 15 510 (approximately 2.3%) of whom were declared as disabled. 6 984 pupils were placed in special schools.

According to the report, in Northern Ireland, 73 435 pupils (at nursery, pre-school, primary and secondary level and in special schools) were registered as having special educational needs and 15 977 of them had a statement of such needs. Northern Ireland had 39 special schools, 1 hospital school and 87 primary and post primary schools (see the report for more details).

In Northern Ireland, a regional strategy entitled “Access to Success” was launched in September 2012 to widen access to higher education for persons with disabilities (among others). The report gives detailed information on disabled students’ allowances.

According to the UN Committee Rights of Persons with Disabilities (CRPD/C/GBR/1), in 2011 the Ministry of Education published the Green Paper “Support and aspiration: A new approach to special educational needs and disability – a consultation”. This consultation document provides for measures to improve the school results of children with disabilities and to give families more assistance. The document also contains a number of proposals for reforming the special educational needs system.

The report of the Academic Network of European Disability Experts (ANED) refers to a new strategy concerning people with disabilities entitled “Fulfilling Potential: making it happen”, which was published in 2011. It includes action plans and indicators which help gauge progress and show where work needs to be done. The national action plan contains 8 initiatives under the heading “education. It includes, among other things, teacher training in the field of special educational needs and disabilities, with several possibilities of training in special schools.

The report stipulates that in Scotland, the Curriculum for Excellence aims to ensure that all children and young people receive support to ensure that they have access to the curriculum regardless of their circumstances. In June 2014, the Commission for Developing Scotland’s Young Workforce published a report which made a number of key recommendations concerning the need to ensure equality of opportunity for all young people in education and employment, with a focus on disability (among other things). In December 2014, the Developing the Young Workforce Youth Employment Strategy setting out a number of actions and measures aimed at tackling inequalities, was published. The Committee asks that the next report provide information concerning the progress made thanks to this strategy.

The report also points out that the document entitled “Special educational needs and disability code of practice: 0 to 25 years” came into force on 1 September 2014 (the revised version came into force on 1 April 2015). This code subsumes the previous guidance document entitled “Inclusive Schooling – Children with Special Educational Needs”.

The report states that the new Children and Families Act 2014 received Royal Assent on 13 March 2014. This law modifies the support system in the health, education and social services sectors. Part 3 of the Act applies to England only and sets out a new framework for children and young people who have special educational needs and disabilities. However that legislation will continue to apply for young people with learning difficulty assessments until September 2016 and until April 2018 for children with special educational needs statements. The Committee asks that the next report provide information on the practical impact of this legislation on the integration of disabled pupils and students into mainstream education.

The Department of Education has set up team of National Advisers (SEND advisers) for people with special educational needs and a disability to help local authorities prepare for and implement the reforms. The Committee wishes to know the success rate of children with

disabilities as regards access to vocational training, further education and entry on to the mainstream labour market.

### ***Vocational training***

According to the official data provided by the Higher Education Statistics Authority covering all of the British population, for 2014-2015 the number of full-time students studying for a master's degree declaring that they were disabled was 161,805 out of a total of 1,391,705, students and 41,440 part-time students with disabilities out of a total of 336,190. According to the same statistics the number of full-time post-graduate students declaring that they had a disability was 18 560 out of a total of 305 445 students and 17 615 part-time students out of a total of 232 740.

The report states that in England there are study programmes tailored to meet the needs of learners with learning difficulties and/or disabilities according to their prior attainment and special educational needs. As the needs of this group are very wide ranging, the study programmes may include vocational experience, and mathematics and English at an appropriate level. On the other hand, an institution may decide that it may not be appropriate for students who have profound or complex learning difficulties to pursue English and mathematics with a view to obtaining GCSE qualifications.

The report states that in England the Residential Training Colleges currently support approximately 800 people with disabilities per year. In 2011/12 there were around 850 starts at Residential Training Colleges and 317 subsequent job outcomes. The Committee asks that the next report provide information on the conditions under which persons with disabilities can take advantage of this programme and whether this type of programme exist in Scotland, Wales and Northern Ireland and, if not, whether people from Scotland, Wales or Northern Ireland may follow such a programme of study in a college in England.

### ***Conclusion***

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

## **Article 15 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement**

### *Paragraph 2 - Employment of persons with disabilities*

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

### ***Employment of persons with disabilities***

According to the statistics for 2013 provided by the Department of Work and Pensions, there are 11.5 million working-age people in Great Britain with a long-term health condition. 6.5 million persons (more than half) are classified as disabled under the Equality Act 2010, because they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. According to the same report, the employment rate for working-age adults with a longstanding illness is only 58% compared to 77% for non-disabled working-age adults. The employment rate for people with disabilities is lower than 45%. The employment rate for all persons suffering from mental disorders is 37% compared to 71% of the working-age population as a whole.

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

The Committee notes from the report that there has been no change to the legislation examined in the Committee's previous conclusions (Conclusions XX-1 (2012)). The case-law with regard to discrimination in employment is presented in detail in the report (Appendix 1D).

In its previous conclusion (Conclusions XX-1 (2012)), the Committee asked that the next report provide information on any development in action taking to prevent discrimination on the grounds of disability in the Isle of Man. The report explains that the Government of the Isle of Man no longer intends to bring the Disability Discrimination Act 2006 into operation as it would have dealt with discrimination on the grounds of disability in the provision of goods and services, but not in employment. In 2014, the Government of the Isle of Man presented a new equality act based on the UK Equality Act 2010 which will deal with discrimination in both employment and the provision of goods and services on various grounds including disability. This law should come into force in 2015. The Committee asks that the next report provide all the necessary information on this subject.

Although the Isle of Man is still not covered by the anti-discrimination legislation, a number of initiatives exist to help persons with disabilities find employment; details of these are given in the report.

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

The report of the Academic Network of European Disability Experts (ANED) refers to a new strategy concerning people with disabilities entitled "Fulfilling Potential: making it happen", which was published in 2011. It includes action plans and indicators which help gauge progress and show where work needs to be done. The national action plan contains 41 initiatives concerning employment with a focus on more personal types of job support.

The report describes the Work Programme rolled out nationally in June 2011. This programme proposes personalised support for those who in greater need of assistance in actively and effectively seeking employment, in particular people with disabilities. It supports a wide array of claimants who are receiving out of work benefits and who are at risk of long term unemployment. This includes both claimants on Jobseeker's Allowance and some claimants on Employment and Support Allowance.

The Department for Work and Pensions has responsibility for a range of specialist employment provision specifically aimed at people with disabilities, where the ordinary work

programme or other mainstream provision may not be suitable. The report mentions a number of initiatives:

- “Work Choice”, which was launched in October 2010, helps around 9,000 people with disabilities into work every year. It ensures that disabled people with complex employment barriers and more intensive support needs find employment, and have access to appropriate assistance in obtaining, taking up and keeping jobs. It runs alongside the Work Programme and Pre-Work Programme Jobcentre Plus Offer. It is accessible by any person with disabilities who volunteers. Access to the programme is usually arranged through a Disability Employment Adviser in a local Jobcentre Plus office (run by the Department of Work and Pensions).
- Other programmes are run by “Remploy”, a public body which is not answerable to the Department of Work and Pensions, which delivers employment support for people with disabilities and operates in a traditional manner in two sectors:
  - Remploy Employment Services offers the opportunity to follow the “Work Choice” programme in its national network of over 60 branches and offices, employing around 850 staff in England, Scotland and Wales.
  - Remploy Enterprise Businesses provided sheltered employment to 2,150 persons with disabilities in 54 factories in 2011-2012.
- The report states that in England the “Residential Training Colleges” support approximately 800 people with disabilities per year. In 2011/12 around 850 people started courses at Residential Training Colleges and 317 subsequently found employment. The Committee asks that the next report provide information on the conditions under which persons with disabilities can take advantage of this programme and whether this type of programme exist in Scotland, Wales and Northern Ireland and, if not, whether people from Scotland, Wales or Northern Ireland may follow such a programme of study at a college in England.
- The “Access to work” programme provides practical advice and financial support to employees with disabilities (see Conclusions XX-1 (2012)). In 2014 Access to Work was extended to include a variety of opportunities that help people with disabilities to prepare for employment, including supported internships, traineeships and self-directed work experience.
- The Committee takes note of the report on “The disability and health employment strategy: the discussion so far”, published by the Department of Work and Pensions in December 2013. This paper sets out a range of proposals for improving government-funded employment support for people with disabilities.
- According to the report, the “Disability Confident campaign” was launched in July 2014 by the Prime Minister to help employers to remove barriers, increase understanding and ensure that people with disabilities have the opportunity to fulfil their potential and realise their aspirations.

The report also contains information on the employment support programmes on offer in Northern Ireland, in particular “Workable” (between January 2011 and December 2014 the numbers participating in the programme rose from 341 to 560); “Access to work” (560 participants in 2009 and 685 in 2014); “New deal for disabled people” (between January 2009 and March 2011 NDDP succeeded in helping 619 people into work; the programme was replaced by “Work Connect” in September 2012); “Work Connect” (since September 2012, 271 clients have been helped into work); “Condition Management Programme” (over 1 108 persons took part in this programme in 2014); “Return to Work Credit” (some 11 500 persons received the return to work credit; this programme ended on 31 December 2014); and “Ulster Supported Employment Ltd” (a private company offering sheltered employment to 60 persons with disabilities).

In Wales, the “Lift Programme” was launched in March 2014 and focuses on people who have been out of work for more than six months and face employment barriers, in particular

persons with disabilities. The Committee asks that the next report contain information on the practical implementation of this programme and its impact in terms of helping persons with disabilities into both mainstream and sheltered employment.

The Committee takes note of the report of the Independent Advisory Panel set up by the Minister for Disabled People in August 2012 to review residential training provision. The report, which was published in July 2013, made a number of recommendations, which the Department is working to address. The Committee asks that the next report contain information on the progress made with regard to the application of the recommendations of the Independent Advisory Panel.

The Committee takes note of the report entitled "Getting in, staying in and getting on" on the examination of the "Access to employment" and "Remploy" and "Residential Training Colleges" programmes, which was published in June 2011. In March 2012, the Government accepted the report's recommendations on how more people with disabilities could be supported into work within the available funding.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the United Kingdom is in conformity with Article 15§2 of the 1961 Charter.



## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 1 - Applying existing regulations in a spirit of liberality*

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

EEA nationals are entitled to live and work in the United Kingdom without a work visa. Croatian nationals are not subject to the Immigration Rules but require permission to take up employment in the UK under the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013. Restrictions on Bulgarian and Romanian nationals' access to the labour market were lifted at the end of 2013.

### **Work permits**

The Committee previously noted (Conclusions XX-1(2012)) the introduction in 2008 of a Tier System regulating immigration for non-EEA migrants and replacing the previous work permit system. The following categories apply:

- Tier 1 covers the sub-categories of Entrepreneurs, Investors and Exceptional Talents. The "Entrepreneur" sub-category applies to people wishing to set up or take over a business in the UK, with over £200,000 of funds; they are granted a 3-years permit which can be converted into an Indefinite Leave to Remain (ILR) in the UK if the business established has generated two full-time jobs or equivalent and has maintained tax and other financial records. Under the "Investor" sub-category, applicants become eligible to ILR in two to five years, depending on the amount they can invest in the UK (from £2,000,000 to £10,000,000). The "Exceptional Talent" sub-category concerns those who are recognised or have potential to be recognized as exceptionally talented leaders in the fields of science, the humanities, engineering, medicine, digital technology or the arts; this visa is issued for an initial maximum period of five years and four months.
- Tier 2 covers employees who are coming to the UK to fill a vacant position that cannot be filled by a EEA citizen and who have confirmed sponsorship from a licensed UK employer. There are 4 sub-categories of Tier 2 work permits: skilled workers (people with a specific skilled job offer in the UK who are needed to fill a temporary gap in the labour force), Intra-company transfer (people who are being transferred to a UK branch of their organisation), sports people (elite professional athletes and coaches) and Minister of religion (workers within a bona fide religion). Under the Tier 2 system, applicants must pass a points test, based on their qualifications, future expected earnings, sponsorship, English language skills and available maintenance. A successful applicant is given up to three years to live and work in the UK for that employer. This period can be extended and, after being in the UK for five years, it is possible to apply for ILR. Work permits are specific to the employers who obtained them, meaning that they are not transferable.
- Tier 3, originally designed for low-skilled workers filling specific temporary labour shortages, is not implemented.
- Tier 4 concerns students who have already been offered a position at an educational institution and the duration of the student visas depends on the duration of the studies.
- Tier 5 covers temporary workers and youth mobility, whether working under an International Agreement; Charity Workers; temporary workers in the Creative and Sporting field; Religious Workers or Temporary Workers under a Government Authorised Exchange. Applicants under Tier 5 system can come to the UK for a maximum of 12 months (except for the Youth Mobility and International Agreement Schemes where successful applicants will get 24 months) in order to

seek temporary and short-term work, after which they will be expected to leave. They also need to have a valid certificate of sponsorship from a licensed UK employer (except the Youth Mobility Scheme) registered with the UK Border Agency, and comply with the maintenance requirements, that is having enough funds to support themselves in the UK.

The Committee takes note of the changes introduced during the reference period as indicated in the report, in particular the closing of Tier 1 (General) and (Post-study work) in 2011-2012: these sub-categories concerned respectively highly skilled potential migrants looking for a job or wishing to become self-employed in the UK and people wishing to apply for work after completing a degree at a UK institution.

### ***Relevant statistics***

The report provides statistics concerning entry clearance visas issued by employment category as well as by country of origin: the number of work related entry clearance visas was 149,310 in 2011; 145,110 in 2012; 154,760 in 2013 and 167,202 in 2014.

According to the Immigration statistics report (October to December 2014), in 2014 there were 8% more work-related visas granted compared to 2013, largely accounted for by 13% higher skilled work grants (+10,743) and 87% higher grants of investor visas (+1,397). There was a 14% increase in skilled work visa applications (to 54,571 in 2014, main applicants).

On the other hand, the grants of extensions of work-related visas fell by 28% (-33,907), mainly due to the closing of Tier 1 (General and Post-Study) grants to new entrants. The number of permissions to stay permanently also fell of a third (-33%; -51,542), to 103,147 in 2014, the lowest figure since 1999 (97,115). This drop was accounted for by falls in family-related (-27,045), work-related (-20,499) and asylum-related grants (-4,075).

In the year ending September 2014, the UK Office of National Statistics estimates that there were 66,000 non-EU long-term immigrants for work, a 57% (+24,000) statistically significant increase. Over the same period long-term (1 year or more) work-related visas granted to main applicants also rose, by 10% (+5,749) to 63,543.

The Committee notes from the report, in response to its request, that the refusal rates between 2011 and 2014, according to the category of visas, remained low, except for the Entrepreneur category, where the refusal rate reached 44% in 2014. The report points out that this higher rate is due to the high number of abusive or speculative applications and that this category concerns a limited number of applications. As regards Tier 2, which concerns the greater number of applications, the refusal rate was in 2014 of 4% as regards skilled workers and of 1% as regards intra-company transfers. According to the report, the grounds for refusal of these applications vary and in some cases the applications were refused because the applicant did not have sufficient knowledge of the English language or had insufficient funds to meet maintenance requirements.

As regards the "priority workers" rules, the report indicates that while the operation of these rules do not typically result in refusal of applications, employers are nevertheless required to confirm that they have advertised the vacancy in an appropriate manner. The Committee requests the next report to specify the refusal rates of work-related applications introduced by nationals of non-EEA states which are parties to the Charter, compared to other non-EEA nationals. In the meantime, in light of the global low rate of refusals indicated above, it considers that the situation of the United Kingdom complies with Article 18§1 of the Charter.

### ***Conclusion***

Pending receipt of the requested information, the Committee concludes that the situation in the United Kingdom is in conformity with Article 18§1 of the 1961 Charter.

### **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 2 - Simplifying existing formalities and reducing dues and taxes*

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

#### ***Administrative formalities and time frames for obtaining the documents needed for engaging in a professional occupation***

The Committee refers to its conclusion under Article 18§1 for a description of the Immigration Tier System, which applies to non-EEA migrants wishing to work in the UK. As it previously noted (Conclusions XIX-1(2008) and XX-1 (2012)), different conditions apply to each Tier. In particular, applicants are required to score a sufficient number of points (based for example on their abilities, experience and age) to gain entry clearance or to extend their leave to remain in the United Kingdom.

The Committee notes from the report that non-EEA migrants wishing to access the UK labour market as employed workers must apply under the Tier 2 and Tier 5 schemes. In response to the Committee's question, the report confirms that an entry clearance issued to a Points based system will confer permission both to work and reside. In this respect, the system has been simplified: the migrant makes only one application, after obtaining a certificate of Sponsorship by an employer licenced by the Home Office for that purpose. Employers need to obtain authorisation from the Home Office to issue a Certificate where the annual limit on the number of such Certificates issued applies.

The Committee previously noted (Conclusions XIX-1(2008)) that the majority of applications were dealt in one to five weeks. It asks the next report to provide updated information in this respect.

The authorities clarify in their report that, while Tier 1 partially covers the situation of self-employed workers, it only applies to those coming to establish a business, with a minimum financial investment and the requirement to have created at least two jobs after three years. It does not cover on the other hand people who would be seeking to hire out their personal labour on a contract basis.

#### ***Chancery dues and other charges***

In its previous conclusion (Conclusions XX-I (2012)), the Committee found that the fees charged for work permits were excessive. It notes from the report that the situation in this respect has not changed: the current fees for applications under the Points-Based System range from £208 (€266 at the rate of 31/12/2014) for Tier 5 (Temporary Work and Youth mobility) to a maximum of £1 093 (€1 397) for in-country applications under Tier 1 (Entrepreneur, Investor and Exceptional Talent). The fees under Tier 2, which concerns the majority of applications, range between £428 (€547) and £1 202 (€1 536) in certain cases.

Although nationals of states party to the Charter enjoy certain benefits (they are entitled to a fee reduction of £55 (€70) and there is no fee at all for a "certificate of sponsorship"), the Committee considers that the fees are still high and that this is not in conformity with the states' undertaking to reduce or abolish chancery dues and other charges payable by foreign workers or their employers. The Committee notes the justification given in the report for the level of the fees charged. It asks whether this amount, which is based on the need to strike a balance between the resources required to control migration and to ensure that the United Kingdom continues to attract migrants, is calculated according to any other criteria laid down in the regulations. Pending receipt of this information, the Committee considers that the situation is not in conformity with Article 18§2 of the 1961 Charter.

### *Conclusion*

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 18§2 of the 1961 Charter on the ground that the fees charged for work permits are excessive.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 3 - Liberalising regulations*

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

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

The authorities state in the report that the Government policy aims at reducing the overall level of net migration and does not favour a liberalisation of non-EEA nationals' access to the UK labour market.

The Committee refers to its conclusion under Article 18§1 for a description of the Immigration Tier System, which applies to non-EEA migrants wishing to work in the UK. As it previously noted (Conclusions XIX-1(2008) and XX-1 (2012)), different conditions apply to each Tier. In particular, applicants are required to score a sufficient number of points (based for example on their abilities, experience and age) to gain entry clearance or to extend their leave to remain in the United Kingdom. Migrants wishing to establish in the UK as self-employed workers are only allowed to do so upon condition of investing at least £200,000 (€255 542 at the rate of 31/12/2014) and to create two additional jobs in three years, unless they are recognized as being "exceptional talent" leaders in the fields of science, the humanities, engineering, medicine, digital technology or the arts. As regards employed workers, they can only access the labour market to fill a vacant position that cannot be filled by a EEA citizen and as long as they have a confirmed sponsorship from a licensed UK employer.

The Committee recalls that the implementation of policies limiting access of third-country nationals to the national labour market, should neither lead to a complete exclusion of nationals of non-EU (or non-EEA) States parties to the Charter from the national labour market, nor substantially limit the possibility for them of acceding the national labour market. Such a situation, deriving from the implementation of "priority rules", i.e. rules giving priority in the access to the national labour market to foreign workers from other European States members of the same economic area, would not be in conformity with Article 18§3, since the State in question would not comply with its obligation to progressively liberalise regulations governing the access to the national labour market with respect to foreign workers of a number of States Parties to the Charter (Conclusions XX-1 (2012), Statement of Interpretation of Article 18§§ 1 and 3).

In this respect, the report indicates that the operation of "priority workers" rules does not typically result in refusal of applications. The information provided does not allow however the Committee to assess whether these rules excessively restrict access to the national labour market for nationals of non-EEA states which are parties to the Charter. The Committee refers in this respect to the question raised under 18§1 and asks the next report to provide evidence that nationals of Contracting Parties to the Charter which are not members of the EEA are not unduly restricted from access to the UK labour market (as employed or self-employed workers). It reserves in the meantime its position on this point.

In response to the Committee's question concerning the measures adopted to liberalise regulations governing the recognition of foreign certificates, professional qualifications and diplomas, with a view to facilitating the access to national labour market, the report states that the UK's procedures for regulating the admission of overseas workers do not typically involve any consideration of whether the overseas worker's qualifications are ones that are recognised in the UK. Visa procedures generally assume that it is properly for the hiring employer to satisfy themselves that the worker is sufficiently qualified for the employment in question. Furthermore, the UK is a signatory to the Lisbon Convention on the Recognition of Qualifications concerning Higher Education in the European Region. In accordance with this Convention, immigrants, can apply to UK NARIC (National Recognition Information Centre)

for a Statement of Comparability, to use when applying for jobs, educational courses and for other purposes.

The Committee recalls that the restrictions initially imposed with regard to access to employment (which can be accepted only if they are not excessive) must be gradually lifted after a person has been legally resident for a given length of time on the territory of another party. In this connection, according to the report, most migrants admitted under Tiers 1 and 2 of the Points Based System do so on terms which allow them to qualify for removal of the time limit on their stay and any restrictions on their access to the labour market after five years. The Committee asks the next report to provide information on the criteria applying to the renewal of work permits.

### ***Consequences of loss of employment***

In its previous conclusion (Conclusions XX-1(2012)) the Committee held that the situation in the UK was not in conformity with Article 18§3 of the Charter as foreign workers' residence permits might be revoked if they lost their job, and they might be then obliged to leave the country as soon as possible.

In this respect, the authorities point out in their report that workers are not automatically deprived of the possibility of remaining in the UK, if the employment for which they were admitted is prematurely ended. In such cases, the UK's practice is to curtail any unexpired permission to remain for the purpose of the original employment and to then grant a new extension of stay of 60 days during which the worker may seek alternative employment and apply for authorisation of the new employment. These arrangements, according to the report, also constitute a liberalisation of the position which existed before the Points Based System was introduced (when a period of grace of 28 days applied, as opposed to the current 60 day period).

### ***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 4 - Right of nationals to leave the country*

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

It notes that the situation, previously considered to be in conformity with the Charter (Conclusions XX-1 (2012)), remains unchanged: no regulations prevent British citizens from leaving the United Kingdom to work in another member state, except pursuant to a court order or as a bail condition (Criminal Justice and Public Order Act 1994).

*Conclusion*

The Committee concludes that the situation in the United Kingdom is in conformity with Article 18§4 of the 1961 Charter.