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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2020

ANDORRA

This text may be subject to editorial revision.

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts decisions.

Information on the Charter, statements of interpretation, and general questions from the Committee, is contained in the General Introduction to all Conclusions.

The following chapter concerns Andorra, which ratified the Revised European Social Charter on 12 November 2004. The deadline for submitting the 13th report was 31 December 2019 and Andorra submitted it on 16 December 2019.

The Committee recalls that Andorra was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to all findings of non-conformity or deferral in its previous conclusions (Conclusions 2016).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2016) found the situation to be in conformity, there was no examination of the situation in 2020.

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 concerned the following provisions of the thematic group I "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 to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 20);
- the right to protection in cases of termination of employment (Article 24);
- the right of workers to the protection of their claims in the event of the insolvency of their employer (Article 25).

Andorra has accepted all provisions from the above-mentioned group except Articles 18§1, 18§2, 18§3, 24 and 25.

The reference period was from 1 January 2015 to 31 December 2018.

The conclusions relating to Andorra concern 11 situations and are as follows:

– 7 conclusions of conformity: Articles 1§1, 1§4, 10§1, 10§3, 10§4, 15§1 and 15§2; and

– 2 conclusions of non-conformity: Articles 10§5 and 20.

In respect of the other 2 situations related to Articles 1§2 and 15§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 Andorra under the Revised Charter.

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

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

- the right to protection against poverty and social exclusion (Article 30).

The deadline for submitting that report was 31 December 2020.

Conclusions and reports are available at 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 Andorra.

Employment situation

According to the data published by the Andorran Government's statistics office, the GDP growth rate doubled during the reference period, rising from 0.8% in 2015 to 1.6% in 2018.

The overall employment rate (persons aged 15 to 64 years) increased from 79.5% in 2015 to 80.3% in 2018.

The employment rate for men increased from 82.1% in 2015 to 84% in 2018. The employment rate for women fell very slightly, from 76.7% in 2015 to 76.6% in 2018. The employment rate for older workers (55 to 64-year-olds) increased from 74.8% in 2015 to 79.6% in 2018. The youth employment rate (15 to 24-year-olds) decreased from 27% in 2015 to 26.2% in 2018.

The overall unemployment rate (persons over 15 years of age) fell sharply, from 4.1% in 2015 to 2% in 2018.

The unemployment rate for men dropped from 4.8% in 2015 to 1.8% in 2018 while for women it fell from 3.2% in 2015 to 2.2% in 2018. Youth unemployment (15 to 24-year-olds) decreased from 20.4% in 2015 to 10.8% in 2018.

The Committee notes that the economic situation improved during the reference period and the labour market continues to show positive features, in particular high employment rates – except among young people – and low unemployment rates.

Employment policy

In its report, the Government states that during the reference period, various employment incentive programmes (in the public sector, business and geographically remote areas) were continued and stepped up, and resulted in the employment of 334 unemployed persons in 2015, 88 in 2016, 141 in 2017 and 156 in 2018 (the average number of registered jobseekers amounting to 569 in 2015, 480 in 2016, 388 in 2017 and 385 in 2018).

The Government adds that in 2016, it launched a new strategy intended to progressively implement a system for a personalised, integrated approach to employment. In this context, individual vocational guidance packages were devised, and training was set up on various subjects (computing, languages, etc.) and for various occupations (apprentice chef, hotel receptionist, personal assistant, packer, etc.). One of the main benefits of these measures was a reduction in the number of persons in long-term unemployment (exceeding 12 months), which decreased from 70 in 2015 to 59 in 2016 and 36 in 2017 and 2018.

The Government further states that in 2015 the Ministry of Education launched a programme to promote employment for young people between the ages of 16 and 20 who are no longer in compulsory schooling but have not obtained a secondary school leaving certificate or equivalent. The programme enables them to attend training with the aim of helping them to get onto the labour market; it also encourages companies to take on young people and provide them with practical training by paying a share of their wages. During the reference period, 94 young people (including 29 women) took part in this programme, and 24 (25.6%) found a job following their training.

In addition, the Government mentions that since the entry into force of Law No. 4/2018 of 22 March 2018 on temporary and transitory humanitarian protection, persons entitled to such protection have been granted individual support and follow-up to help with their integration, including assistance with jobseeking.

According to the report, public expenditure on active labour market policies fell from 0.13% of GDP in 2015 to 0.08% of GDP in 2018, or from about €3.3 million to €2.2 million. The activation

rate fell abruptly from 58.7% in 2015 to 18.3% in 2016, then rose again to 36.3% in 2017 and 40.5% in 2018.

The Committee considers that the labour market policies implemented in Andorra satisfy the requirements of Article 1§1 of the Charter.

Conclusion

The Committee concludes that the situation in Andorra is in conformity with Article 1§1 of the 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 Andorra.

1. Prohibition of discrimination in employment

Article 1§2 of the Charter prohibits all forms of discrimination in employment. The Committee asked the State Parties to provide updated information for this reporting cycle on the legislation prohibiting all forms of discrimination in employment, in particular on grounds of gender (had Article 20 not been accepted), race, ethnic origin, sexual orientation, religion, age, political opinion, disability (had Article 15§2 not been accepted), including information on legal remedies. It furthermore asked to indicate any specific measures taken to counteract discrimination in the employment of migrants and refugees.

The Committee will therefore focus specifically on these aspects. It will also assess the replies to all findings of non-conformity or deferrals in its previous conclusion.

The Committee points out that Andorra has accepted Articles 20 and 15§2 of the Charter. For aspects relating to discrimination in employment on the grounds of gender and disability, the Committee therefore refers to its conclusions on these provisions.

With regard to legislation prohibiting discrimination in general, the report states that at the beginning of 2019, the *Consell General* approved Law No. 13/2019 of 15 February 2019 on equal treatment and non-discrimination (*Llei per a la igualtat de tracte i la no discriminació*). This Law came into force on 21 March 2019 (outside the reference period). The Committee takes note of this major development in anti-discrimination legislation. Given that Law No. 13/2019 came into force outside the reference period, the Committee asks for the next report on this thematic group to provide detailed information on the contents of this law, particularly in response to the aforementioned questions regarding the legislation prohibiting all forms of discrimination in employment, particularly those on grounds of race, ethnic background, sexual orientation, religion, age, political opinions and information on available remedies.

The Committee also notes that during the reference period, the *Consell General* examined and approved Law No. 31/2018 of 6 December 2018 on labour relations (*Llei de relacions laborals*); however, this law came into force on 1 February 2019, outside the reference period. The Committee asks for information in the next report on the provisions of this Law with regard to discrimination in employment and the remedies available to the victims of discrimination.

The report states that during the reference period, the legislation which prohibited discrimination in employment was Law No. 35/2008 of 18 December 2008 on the Labour Relations Code, particularly Articles 4, 45, 74 and 75. The report points out that Article 4 of this Law provides that “employers and employees must apply the employment contract in good faith and avoid any abuse of rights, anti-social conduct or discrimination on the ground of birth, race, gender, sexual orientation, origin, religion, opinion, any other consideration of a personal or social nature, or membership or non-membership of a trade union. Clauses which constitute discrimination shall be considered null and void; either party may, individually or collectively, apply to a court for them to be declared null and void”.

The Committee asks if the provisions of Law No. 35/2008 of 18 December 2008 referred to above were amended or repealed by Law No. 31/2018 of 6 December 2018 on labour relations. It asks for up-to-date information on the provisions of Law No. 31/2018 on discrimination in employment.

As to the Committee’s question regarding any specific measure taken to combat discrimination in employment against migrants and refugees, the report does not provide any information. The Committee therefore repeats its request for information.

With regard to available remedies, the report states that in practice, employees who consider themselves to be victims of discrimination may complain to the Labour Inspectorate and/or resign on justified grounds and claim the compensation provided for by the Labour Relations Code. The report adds that it is very rare for employees to lodge a complaint for discrimination and consequently there are very few court decisions on discrimination in employment.

The report mentions that in practice complaints for discrimination are practically non-existent and even where there may have been discrimination, since it is not explicitly listed as one of the grounds justifying resignation, legal proceedings are generally based on Article 97, paragraph 1(h), of Law No. 35/2008 of 18 December 2008 on the Labour Relations Code: "(h) In general, all measures taken by employers or their representatives which, in whatever way at all, are vexatious for employees, undermine their dignity as a human being or entail behaviour constituting psychological, sexual or gender-based harassment."

The Committee took note previously of the information provided on compensation awarded in cases of discrimination (Conclusions 2016). In response to the Committee's previous question with regard to the amount of compensation awarded in discrimination cases (Conclusions 2016), the report gives the example of the decision of 17 May 2018 by the Single-Judge *Batlle* Court (this was not given in a case of discrimination but the amount of compensation would have been the same, had it been the case), in which a company was ordered to pay compensation of €182,002,53 and €93,334,33 to two employees who had been working for this company for a very long time and had terminated their employment contracts on justified grounds. This decision was upheld entirely by Decision No. 63/2019 of 25 July 2019 of the Civil Division of the Supreme Court of Justice.

With regard to penalties, the report states that Article 159, paragraph 3, of Law No. 35/2008 of 18 December 2008 on the Labour Relations Code categorises discrimination as a serious offence, punishable by a fine of €3,001 to €24,000.

While taking note that Law No. 31/2018 of 6 December 2018 on labour relations amended Law No. 35/2008 of 18 December 2008, the Committee asks for detailed information in the next report on the compensation awarded to victims in discrimination cases (including any upper or lower limits provided for in the event of discriminatory dismissal) and the penalties provided for by the new law. In the meantime, it reserves its position on this point.

With regard to shifting the burden of proof, the Committee noted previously that courts apply the *in dubio pro operario* rule established as a general principle in the Labour Relations Code and they may refer to the relevant legislation of the European Union and its member states, particularly those of France and Spain, which both provide for the burden of proof to be shifted in discrimination cases (Conclusions 2016 and 2012).

The current report states that Article 25 of Law No. 13/2019 of 15 February 2019 on equal treatment and non-discrimination provides for the reversal of the burden of proof. The Committee will examine the new legislation in the next conclusion on this thematic group since it occurred outside the reference period. It asks for information illustrated by examples on how the courts apply Article 25 of Law No. 13/2019 in practice.

As to bodies dealing with equal treatment and non-discrimination, the Committee noted previously that Andorra had not set up a body tasked with dealing with discrimination-related matters and instead it was the Labour Inspectorate and the social welfare services which provided information and legal advice to persons who considered that they had suffered discrimination (Conclusions 2012).

The Committee notes that in its report on Andorra (fifth monitoring cycle), the European Commission against Racism and Intolerance (ECRI) of the Council of Europe strongly reiterated its recommendation to ensure the existence of a body with specialised capacity to combat racism, racial discrimination, xenophobia, antisemitism and intolerance at national level in the public and private sectors (Report by ECRI on Andorra, published on 28 February 2017). The Committee also notes from ECRI's conclusions on the implementation of its

recommendations that the Andorran authorities informed ECRI of an amendment, which came into force on 24 November 2017, to the Law establishing the Office of the "Raonador del Ciutadà" (Ombudsman). In addition to his or her previous tasks, the Ombudsman is now in charge of combating all types of discrimination and racist, xenophobic, antisemitic and intolerant attitudes. The Ombudsman is expected, in particular, to ensure that public and private bodies, including the media, respect the principle of gender equality and that all the necessary measures are taken to avoid any form of direct or indirect discrimination on the grounds of birth, race, background, nationality or ethnic background, colour, gender, religion, philosophical, political or trade union views, physical or mental disability, […] sexual identity or orientation, or any other consideration. He or she can now receive complaints of racial discrimination both in the public and private sphere (ECRI conclusions on the implementation of the recommendations in respect of Andorra, published 19 March 2020).

The Committee asks for information in the next report on the activities of the Ombudsman (Raonador) in the area of discrimination in employment and the nature and number of complaints received and measures imposed. It asks if the Ombudsman can receive complaints on discrimination in employment (other than racial discrimination).

The Committee noted previously that the posts of firefighter and forest ranger are reserved for Andorran nationals. It asked whether these occupational categories involved the exercise of public authority (Conclusions 2016).

The report states that Article 5 of Law No. 1/2019 of 17 January 2019 on the civil service (*Llei de la funció pública*) provides as follows: "1. The staff of the civil service shall be appointed to occupy permanent posts whose tasks entail the exercise of authority or direct or indirect participation in exercising the public authority prerogatives of the state. 2. Civil service staff shall have a reserved right to occupy the posts of *interventores* (municipal or state auditors) and posts in the special corps of the customs services, the fire prevention, firefighting and rescue services, the prison authorities, the police force and the forest rangers' department. … 3. Civil service staff shall be required to have Andorran nationality". The report states that consequently, pursuant to this article, the posts referred to in paragraph 2 above, including those of firefighter and forest ranger are reserved for nationals. The Committee considers that the situation is in conformity with the Charter in this respect.

Pending receipt of the information requested, the Committee reserves its position on the aspect of prohibition of discrimination in employment.

2. Forced labour and labour exploitation

The Committee recalls that forced or compulsory labour in all its forms must be prohibited. It refers to the definition of forced or compulsory labour in the ILO Convention concerning Forced or Compulsory Labour (No.29) of 29 June 1930 (Article 2§1) and to the interpretation given by the European Court of Human Rights of Article 4§2 of the European Convention on Human Rights (*Van der Mussele v. Belgium*, 23 November 1983, § 32, Series A no. 70; *Siliadin v. France*, no. 73316/01, §§ 115-116, ECHR 2005-VII; *S.M. v. Croatia* [GC]*,* no. 60561/14, §§ 281-285, 25 June 2020). The Committee also refers to the interpretation by the Court of the concept of « servitude », also prohibited under Article 4§2 of the Convention (*Siliadin,* § 123; *C.N. and V. v. France,* § 91, 11 October 2012).

Referring to the Court's judgment of *Siliadin v. France,* the Committee has in the past drawn the States' attention to the problem raised by forced labour and exploitation in the domestic environment and the working conditions of the domestic workers (Conclusions 2008, General Introduction, General Questions on Article 1§2; Conclusions 2012, General Introduction, General Questions on Article 1§2). It considers that States Parties should adopt legal provisions to combat forced labour in the domestic environment and protect domestic workers, as well as take measures to implement them.

The European Court of Human Rights has established that States have positive obligations under Article 4 of the European Convention to adopt criminal law provisions which penalise the practices referred to in Article 4 (slavery, servitude and forced or compulsory labour) and to apply them in practice (*Siliadin,* §§ 89 and 112). Moreover, positive obligations under Article 4 of the European Convention must be construed in the light of the Council of Europe Convention on Action against Trafficking in Human Beings (ratified by almost all the member States of the Council of Europe) (*Chowdury and Others v. Greece,* § 104, 30 March 2017). Labour exploitation in this context is one of the forms of exploitation covered by the definition of human trafficking, and this highlights the intrinsic relationship between forced or compulsory labour and human trafficking (see also paragraphs 85-86 and 89-90 of the Explanatory Report accompanying the Council of Europe Anti-Trafficking Convention, and *Chowdury and Others,* § 93). Labour exploitation is taken to cover, at a minimum, forced labour or services, slavery or servitude (GRETA – Group of Experts on Action against Trafficking in Human Beings, *Human Trafficking for the Purpose of Labour Exploitation*, Thematic Chapter of the 7th General Report on GRETA's Activities (covering the period from 1 January to 31 December 2017), p. 11).

The Committee draws on the case law of the European Court of Human Rights and the above-mentioned international legal instruments for its interpretation of Article 1.2 of the Charter, which imposes on States Parties the obligation to protect effectively the right of workers to earn their living in an occupation freely entered upon. Therefore, it considers that States Parties to the Charter are required to fulfil their positive obligations to put in place a legal and regulatory framework enabling the prevention of forced labour and other forms of labour exploitation, the protection of victims and the investigation of arguable allegations of these practices, together with the characterisation as a criminal offence and effective prosecution of any act aimed at maintaining a person in a situation of severe labour exploitation. The Committee will therefore examine under Article 1§2 of the Charter whether States Parties have fulfilled their positive obligations to:

- Criminalise and effectively investigate, prosecute and punish instances of forced labour and other forms of severe labour exploitation;
- Prevent forced labour and other forms of labour exploitation;
- Protect the victims of forced labour and other forms of labour exploitation and provide them with accessible remedies, including compensation.

In the present cycle, the Committee will also assess the measures taken to combat forced labour and exploitation within two particular sectors: domestic workers and "gig economy" or "platform economy" workers.

The Committee notes that the report replies to the specific questions on this provision and, in particular, on forced labour, other than the ones relating to preventing forced labour and slavery in supply chains (questions in the appendix to the letter of 27 May 2019 in which the Committee asked for a report on the application of the Charter provisions relating to the thematic group "employment, training and equal opportunities").

Criminalisation and effective prosecution

The Committee recalls that States Parties must not only adopt criminal law provisions to combat forced labour and other forms of severe labour exploitation but also take measures to enforce them. It considers, as the European Court of Human Rights did (*Chowdury and Others*, par. 116), that the authorities must act of their own motion once the matter has come to their attention; the obligation to investigate will not depend on a formal complaint by the victim or a close relative. This obligation is binding on the law-enforcement and judicial authorities.

In its previous conclusion (Conclusions 2016), the Committee noted from the 2015 report that the Criminal Code Act of 21 February 2005 (no. 9/2005), as amended by the Act of 11 December 2014 (no. 40/2014), made forced labour a criminal offence. It notes from the current report that during the reference period (Act 10/205 of 16 July 2015), the Criminal Code was

amended to criminalise specific human trafficking offences, including trafficking for the purposes of slavery or servitude and trafficking in illegal immigrants, money laundering offences (articles 134 b and 252 of the Criminal Code).

The Committee notes from GRETA's last report on Andorra (Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, Second Evaluation Round, GRETA (2019)10, 3 July 2019, para. 113) that Article 134 b of the Criminal Code is concerned with trafficking for the purposes of slavery or servitude, which appears to exclude cases of trafficking for the purpose of labour exploitation. However, in its last conclusion (Conclusions 2016, concerning domestic work from the angle of Article 1.2 of the Charter), it noted that other offences under Part XIII of the Criminal Code ("offences infringing workers' rights") were applicable to cases of exploitation of workers (Conclusions 2016).

The Committee asks for the next report to clarify whether all cases constituting forced labour can be prosecuted in practice under the Criminal Code provisions on offences infringing workers' rights. If so, the report should if possible, include examples of investigations, prosecutions or convictions under this heading.

Prevention

The Committee considers that States Parties should take preventive measures such as data collection and research on the prevalence of forced labour and labour exploitation, awareness-raising campaigns, the training of professionals, law-enforcement agencies, employers and vulnerable population groups, and should strengthen the role and the capacities/mandate of labour inspection services to enforce relevant labour law on all workers and all sectors of the economy with a view to preventing forced labour and labour exploitation. States Parties should also encourage due diligence by both the public and private sectors to identify and prevent forced labour and exploitation in their supply chains.

In answer to the Committee's question concerning regular inspections or checks in sectors particularly affected by labour exploitation such as agriculture, construction, the hotel and restaurant trade and manufacturing industry, the report merely states that no particular action was taken during the reference period to step up inspections in these sectors.

There is no information in the report on whether Andorran legislation includes measures designed to force companies to report on action taken to investigate forced labour and exploitation of workers among their supply chains and requires that every precaution be taken in public procurement processes to guarantee that funds are not used unintentionally to support various forms of modern slavery.

The Committee therefore repeats its questions on these two issues, namely inspections in the abovementioned sectors and prevention of forced labour and exploitation of workers in supply chains of companies and public contracts.

Turning to more general preventive measures, the Committee also asks that the next report state whether studies or investigations have been carried out or are planned in connection with labour exploitation and forced labour (see also, in this context, GRETA's recommendations in its last report on Andorra, par. 31, which is particularly concerned with trafficking for the purposes of labour exploitation in various sectors of the economy, and the recommendations of the United Nations Committee on the Elimination of Racial Discrimination, Concluding observations of 6 May 2019, thus outside the reference period, paras 27 and 28, concerning human trafficking).

Protection of victims and access to remedies, including compensation

The Committee considers that protection measures in this context should include the identification of victims by qualified persons and assistance to victims in their physical, psychological and social recovery and rehabilitation.

The Committee notes from the report that Act 9/2017 of 25 May 2017 on measures to combat human trafficking and protect victims establishes the general principle that the government must take all necessary steps to prevent and identify victims of trafficking, in accordance with the Council of Europe Convention on human trafficking. The legislation grants victims a period of reflection and recovery to enable them to come to terms with their situation and decide whether they wish to co-operate with the investigation authorities. The persons making use of this period are offered a range of benefits and assistance to help them with their physical, psychological and social recovery, including assisted and voluntary return to their countries of origin or any other country offering them the required security, and free health care. Act 9/2017 has also given rise to a protocol of action for the protection of victims of human trafficking, which was approved and published in 2018. Under the protocol, methods have been developed for detecting, identifying, assisting and protecting victims, with the institutions and agencies concerned co-ordinating their activities. The identification procedure must use the methods laid down in the anti-human trafficking manual adopted in Palermo in 2000, which supplements the United Nations Convention against Transnational Organised Crime.

The Committee notes this information and asks for the next report to state whether the existing legislation offers the victims of such practices, including illegal migrants, access to effective remedies (before the criminal, civil or labour courts or through other mechanisms), to secure compensation or redress for all the harm suffered as a result of these offences, including unpaid wages and social security contributions. It also asks for statistics on the number of victims who have received such compensation or redress and examples of the sums awarded.

Domestic work

The Committee reiterates that domestic work may give rise to forced labour and exploitation. Such work often involves abusive, degrading and inhuman living and working conditions for the domestic workers concerned (see Conclusions XX-I (2012), General Introduction, General Questions, and the Court's judgment in *Siliadin v. France*). States Parties should adopt legal provisions to combat forced labour in domestic environment and protect domestic workers as well as take measures to implement them (Conclusions 2008, General Introduction, General Question). The Committee recalls that under Article 3§3 of the Charter, inspectors must be authorised to inspect all workplaces, including residential premises, in all sectors of activity (Conclusions XVI-2 (2003), Czech Republic, Statement of Interpretation of Article 3§3 (i.e., Article 3§2 of the 1961 Charter). It considers that such inspections must be clearly provided for by law and sufficient safeguards must be put in place to prevent risks of unlawful interferences with the right to respect for private life.

In its previous conclusion (Conclusions 2016), the Committee noted the information supplied by the Andorran authorities about the protection afforded by the criminal law to domestic employees exploited by their employer, under the legislation on offences infringing workers' rights, which also applied to domestic staff. It also noted that domestic legislation did not authorise inspections of the homes of private individuals who employed domestic staff (Conclusions 2016). In Conclusions 2017, relating to Article 3§2, the Committee asked whether the home from which a worker operated could be considered as a workplace and as a result be liable to inspection by the labour inspectorate.

The Committee notes that GRETA has urged the Andorran authorities to ensure that labour inspectors' terms of reference enable them to contribute to preventing and detecting cases of trafficking for the purpose of labour exploitation, including within households (GRETA Report, para. 44).

The Committee notes that according to the current report, there are no specific plans to strengthen the inspection system in various sectors, including domestic work. The Committee therefore asks for the next report to explain how the relevant employment legislation (on health and safety, pay, hours worked and leave) is monitored to identify or prevent labour exploitation in the domestic work sector.

Workers in the "gig" or "platform" economy

In reply to the question on measures to protect "gig" or "platform" economy workers from exploitation, the report states that no specific action has been taken as these forms of employment are not recorded in Andorra.

In the meantime, pending receipt of the information requested above, the Committee concludes that the situation in Andorra concerning the prohibition of forced labour and labour exploitation is in conformity with Article 1§2 of the Charter.

Conclusion

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

Article 1 - Right to work

Paragraph 3 - Free placement services

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

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 Andorra.

The Committee recalls that in the appendix to the letter of 27 May 2019 (whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities") no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

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

The Committee considered the situation to be in conformity with the Charter as regards measures relating to vocational guidance (Article 9) (Conclusions 2016), and to vocational training for persons with disabilities (Article 15§1) (Conclusions 2016).

The Committee considered the situation also to be in conformity with the Charter as regards measures concerning vocational training and retraining of workers (Article 10§3) (Conclusions 2020).

Conclusion

The Committee concludes that the situation in Andorra is in conformity with Article 1§4 of the Charter.

Article 9 - Right to vocational guidance

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

Article 10 - Right to vocational training

Paragraph 1 - Technical and vocational training; access to higher technical and university education

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

The Committee refers to its previous conclusions for a description of the situation that it deemed to be in conformity with the Charter (see Conclusions 2016). It notes that a law adopted in July 2018 has amended the general legal framework governing the organisation of the Andorran education system. The law provides that "training is a lifelong process", starting at 16 years of age. It sets out several objectives to be met. A decree dated 25 February 2015 on the organisation of compulsory basic education in the education system provides details and guidance on decisions regarding education. It outlines seven general skills which must be acquired at the end of compulsory basic education.

Measures taken to match the skills with the demands of the labour market

The authorities point out that in 2016, the Agency for the Economic Promotion of Andorra launched a pilot project supported by the Ministry of Education to establish a model partnership between businesses and vocational training bodies. They stressed, using extensive statistical data to support their argument, that this project has now been consolidated in all the branches of vocational training. Moreover, the Committee notes that the Adult Training Centre, an Andorran state education body whose budget has been steadily increasing, provides several free training courses for persons over 16, enabling them to acquire basic skills in a number of fields and/or to strengthen their civic values. In particular, the Committee notes with interest that there is an ongoing training course on information and communications technologies (ICT). These courses may, where appropriate, be validated by certificates or diplomas making it possible to access other education levels up to higher education. One of the training courses offered by the Adult Training Centre makes it possible to award a diploma which exempts its holders from the integration interview which foreign residents applying for Andorran citizenship must attend.

Measures taken to integrate migrants and refugees

The Committee notes that a reception class was set up in September 2006 to meet the needs of newly-arrived pupils aged 12 to 16. These new pupils do not remain in this class for their entire schooling: depending on the learning acquired before, they take part in other courses and workshops with their reference class to enhance contacts with other classmates. Under this scheme, the pupils are given the support needed to develop their linguistic, academic and cultural skills, and to attend mainstream schools and then general or vocational training courses depending on their academic level, for two years at most. Reception classes are intended for children who have just arrived and were formerly attending foreign schools. The Andorran authorities have also adopted a reception protocol for refugee children and adolescents.

The Committee takes note of the support provided by the office of the Social Affairs Department in charge of welcoming refugees, both for families (Catalan language courses and jobseeking assistance) and for employers (alerting them to the specific situation of these employees and their need to be absent to attend language classes).

Conclusion

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

Article 10 - Right to vocational training

Paragraph 2 - Apprenticeship

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

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 Andorra.

In its previous conclusion (Conclusions 2016), the Committee deferred its conclusion.

The Committee notes that Andorra was asked to answer the specific targeted questions concerning this provision (these questions were included in the appendix to the letter of 27 May 2019 in which the Committee requested a report on the implementation of the Charter in relation to the provisions in the "Employment, training and equal opportunities" thematic group).

In its previous conclusion (Conclusions 2016), the Committee asked that the next report provide information on the activation rate and how the burden of the cost of vocational training is shared between public bodies, unemployment insurance systems, enterprises and households as regards continuing training. The Committee takes note of the information provided by the authorities in this regard, which demonstrates the priority given to active employment policies, and in particular efforts to tackle unemployment among the most disadvantaged. The Committee observes that public bodies bear most of the cost of vocational training (through the ministries responsible for labour and education, as well as the Andorran Chamber of Commerce, Industry and Services). The Committee notes that Andorra has no budget for continuing training coming from unemployment insurance systems and that enterprises and households do not pay for continuing training.

In response to the Committee's request for details of the strategies and measures implemented in order to offer opportunities to obtain the training and retraining that workers need to be competitive in new labour markets, the report refers to the information provided in relation to Article 10.1 of the Charter. The Committee refers to its conclusion under Article 10§1.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 4 - Long term unemployed persons

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

The Committee recalls that Andorra was asked to reply to the specific targeted questions for this provision; to indicate the nature and extent of special retraining and reintegration measures taken to combat long-term unemployment as well as figures demonstrating the impact of such measures (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities").

The Committee notes from the report that, as part of the national employment strategy, the Employment Service has, since 2016, put in place measures aimed at improving the quality of its services and its users' choices, and for establishing employment training programmes according to labour market needs.

The Committee notes that these measures include the introduction of individual vocational guidance packages aimed at improving the chances of jobseekers entering the job market, and relevant associated procedures.

It observes that the training on offer concerns so-called cross-cutting issues (such as computing, languages, hygiene and food handling, knowledge of the country to work as a tourist guide, civil protection and assistance, and administrative language) and other practical training (for example, sales techniques, accounting, apprentice chef, catering, hotel receptionist, private security guard, forklift driver, personal assistant, packer and butcher), and that this training is free for jobseekers registered with the Employment Service. Workshops to provide information about the job market, teach participants how to write a CV or prepare them for job interviews are held on a regular basis.

The Employment Service widely disseminates information on the available training in an effort to reach as many people in the target group as possible.

The Committee notes that in 2018, 499 jobseekers were registered for training, 882 training hours were delivered and 46 training courses were attended.

The Committee asks for information in the next report on the percentage of long-term unemployed jobseekers who benefit from these training courses and on what specific measures have been taken for young long-term unemployed.

With regard to the impact of the measures taken to reduce long-term unemployment (long-term unemployment concerns jobseekers who have been unemployed for more than 12 months), the Committee notes from the report that during the reference period, this rate dropped considerably from 17.3% in 2015 to 9.5% in 2018. This is a result of the national employment strategy.

In reply to the question asked by the Committee during the previous evaluation cycle (Conclusions 2016), the report indicates that equal treatment in terms of long-term unemployed persons' access to training and reskilling programmes is guaranteed to everyone who resides legally in Andorra and is registered as a jobseeker with the Employment Service, regardless of their nationality.

The Committee notes from another source that according to the data published by the Andorran Government's Statistics Office, in 2017, the average unemployment rate in the country was 2.4%. It asks for detailed statistics on long-term unemployment in the country in the next report.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 5 - Full use of facilities available

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

The Committee recalls that in its letter requesting national reports it stated that no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

The Committee previously found that the situation in Andorra was not in conformity with Article 10§5 of the Charter on the ground that the law established a length of residence requirement of three years for students to apply for financial aid (Conclusions 2016).

The Committee notes from the report that in 2020 the Andorran Government will submit a proposal to the *Consell General* (parliament) to amend Act. 9/2014 on financial aid in education in order to abolish the condition that students must reside in the country for three years before they receive financial help to continue their higher education. However the Committee notes that there was no change to the situation during the reference period. Therefore the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Andorra is not in conformity with Article 10§5 of the Charter on the ground that there is a length of residence requirement of three years for eligibility for financial aid for vocational training.

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

Paragraph 1 - Vocational training for persons with disabilities

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

It previously found that the situation in Andorra was in conformity with Article 15§1 of the Charter (Conclusions 2016).

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities"). The questions posed for this cycle of supervision focused exclusively on the education of children with disabilities.

The Committee recalls nonetheless that under Article 15 all persons with disabilities, irrespective of age and the nature and origin of their disabilities, are entitled to guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialized bodies, public or private.

Therefore, in its next cycle of supervision, the Committee will examine Article 15§1 issues as they apply to all persons with disabilities (not just as they apply to children).

Legal framework

The Law of 17 October 2002 on the Rights of Persons with Disabilities prohibits any discrimination against persons with disabilities, including as regards access to education and vocational training. It contains a definition of disability which is based on the one adopted by the World Health Organisation (WHO) in its International Classification of Functioning (ICF, 2001) (see Conclusions 2012).

All persons with a degree of disability (physical, mental and/or sensory) of 33%, as assessed by the National Evaluation Commission (*Commissio' Nacional de Valoracio'* – CONAVA), are considered as disabled. The Committee has previously stressed the importance of moving away from a medical definition of disability towards a social definition. An early example is that endorsed by the WHO in its International Classification of Functioning (ICF 2001) which focuses on the interaction of health conditions, environmental factors and personal factors.

Article 1 of the UN Convention on the Rights of Persons with Disabilities (CRPD) crystallises this trend by emphasizing that persons with disabilities include those with long term disabilities including physical, mental or intellectual disabilities "which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." Importantly, this means there is no a priori exclusion from inclusive education based on the type of disability. Indeed, Article 2 of the CRPD which prohibits discrimination "on the basis of disability" may be read to go further by including those who have had a record of disability in the past but who continue to be treated negatively and those who never had a disability but may nevertheless be treated by others as if they had a disability (the so-called "attitudinally disabled").

The Committee therefore asks the next report to clarify whether the assessment of "disability" in the fields of education and vocational training takes into account the personal and environmental factors interacting with the individual. These factors are particularly relevant when it comes to an assessment of "reasonable accommodation'."

Access to education

The Committee previously noted (Conclusions 2012) that, depending on the level of disability, education took place in different forms: education in ordinary classes for at least 50% of the pupils/students' school time and individual assistance by special teachers; education partly in ordinary classes (less than 50% of their schooltime), most of the schooltime being spent in

special needs groups (3-6 pupils/students); education at home or in hospital; special education for pupils/students with severe disabilities (at the *Nostra Senyora de Miritxell* school*)* on the basis of individualised education plans.

According to the report, during the reference period (2015-2018) the number of pupils in mainstream education increased from 93 to 132 in primary schools and from 69 to 83 in secondary schools and vocational training. The number of pupils in special education decreased from 11 to 9. The report also indicates a corresponding increase in the number of support teachers and auxiliary staff (from 89 to 128), as well as in the budget allocated to supporting inclusion in mainstream education (from €2299122 to €3123786). According to the report, there was also an increase in training courses provided to school staff in mainstream and special schools, and the quantity and quality of educational and other resources (suitably adapted material, better organised and co-ordinated action). The Committee takes note of the information provided in the report concerning pupils enrolled in mainstream education and receiving part-time assistance in mental health facilities for children and adolescents (outpatient clinic for children and adolescents, and community-based rehabilitation facilities for adolescents).

In order to assess the effective equal access of children with disabilities to education, the Committee needs States parties to provide information, covering the reference period, on:

- the number of children with disabilities, including as compared to the total number of children of school age;
- the number and proportion of children with disabilities educated respectively in:
    - mainstream classes.
    - special units within mainstream schools (or with complementary activities in mainstream settings)
    - in special schools
- the number and proportion of children with disabilities out of education;
- the number of children with disabilities who do not complete compulsory school, as compared to the total number of children who do not complete compulsory school;
- the number and proportion of children with disabilities under other types of educational settings, including:
    - home-schooled children
    - attending school on a part time basis
    - in residential care institutions, whether on a temporary or long-term basis
- the drop-out rates of children with disabilities compared to the entire school population.

Measures aimed at promoting inclusion and quality in education

The Committee recalls that Article 15§1 of the Charter makes it an obligation for States Parties to provide quality education for persons with disabilities, together with vocational guidance and training, and that priority should be given to inclusive education in mainstream school. States parties must demonstrate that tangible progress is being made in setting up inclusive and adapted education systems.

The Committee has recognised that "integration" and "inclusion" are two different notions and that integration does not necessarily lead to inclusion (MDAC v. Belgium Complaint No.109/2014, Decision on the admissibility and merits 16 October 2017, FIDH and Inclusion Europe v. Belgium Complaint No. 141/ 2017, Decision on the merits of 20 September 2020). The right to an inclusive education relates to the child's right to participate meaningfully in mainstream education.

The Committee notes that the UN Committee on the Rights of Persons with Disabilities, in its General Comment No. 4, (2016), on the Right to inclusive education has stated that "inclusion involves a process of systemic reform embodying changes and modifications in content,

teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences. Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion. Furthermore, integration does not automatically guarantee the transition from segregation to inclusion".

The Committee also recalls that inclusive education implies the provision of support and reasonable accommodations which persons with disabilities are entitled to expect in order to access schools effectively. Such reasonable accommodations relate to an individual and help to correct factual inequalities (MDAC v. Belgium, Complaint No.109/2014, Decision on admissibility and merits 16 October 2017 para 72). Appropriate reasonable accommodations may include: adaptations to the class and its location, provision of different forms of communication and educational material, provision of human or assistive technology in learning or assessment situations as well as non-material accommodations, such as allowing a student more time, reducing levels of background noise, sensitivity to sensory overload, alternative evaluation methods or replacing an element of the curriculum by an alternative element.

The Committee asks the States parties to provide information on how reasonable accommodation is implemented in mainstream education, whether and to what degree there is an individualized assessment of "reasonable accommodation" to ensure it is adequately tailored to an individual's circumstances and learning needs, and to indicate what financial support is available, if any, to the schools or to the children concerned to cover additional costs that arise in relation to ensuring reasonable accommodations and access to inclusive education.

It asks in particular what measures are taken to ensure that teachers and assistants dealing with pupils and students with disabilities are adequately qualified.

It furthermore asks whether the qualifications that learners with disabilities can achieve are equivalent to those of other learners (regardless of whether learners with disabilities are in mainstream or special education or of whether special arrangements were made for them during the school-leaving examination). The Committee also asks whether such qualifications allow persons with disabilities to go on to higher education (including vocational training) or to enter the open labour market. The Committee also asks the state to provide information on the percentage of disabled learners who go on to higher education or training. The Committee also asks what percentage of learners with disabilities enter the open labour market.

On the basis of the information available in the previous reports (see Conclusions 2012, 2016) and the current one, the Committee notes that the Law on Special Education of June 1994 provides that children in special education must have their situation regularly reviewed with a view to determining whether they may be offered some form of mainstream education. The law also provides that the necessary adjustments should be made to adapt the school environment to the needs of disabled pupils and promote their inclusion. Throughout their education pupils/students are furthermore allocated financial and other support (including support staff and the necessary adjustments) by the education commissions, who reassess and renew them according to the requests made by schools. The Inspectorate is in charge of verifying that the adjustments to the education program do not amount to an obstacle to getting official diplomas. Special measures apply in official examinations (under a decree of 16 January 2013) to ensure equal opportunities for pupils with disabilities. The Ministry of Education subsidises many specific training courses enabling teachers to acquire knowledge on special needs education. In addition, the University of Andorra offers a bachelor's degree in educational sciences to which special needs education can be added as an extra training module.

The report clarifies that the human and material resources to adapt the school environment to the educational needs of pupils with disabilities are provided by the Andorran government and that additional financial support (to cover the cost of school material, transport and school meals) is available through study grants (Law and regulation on study grants of 2014, see Conclusions 2016).

Remedies

The Committee previously noted that CONAVA's decisions can be appealed to the Government within a period of 13 working days, which starts the day following the receipt of the notice of the decision. The judicial phase starts only if this administrative appeal is dismissed (Conclusions 2012). The report adds, in reply to the Committee's question, that according to the Administration Code, every citizen has a right to appeal against an administrative decision. In the case of exclusion from the mainstream schooling system on the ground of disability, as this is an administrative ruling, the customary protocol against administrative decisions is followed. No administrative appeal was submitted during the reference period.

The Committee asks the next report to provide updated information in this respect.

Conclusion

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

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

Paragraph 2 - Employment of persons with disabilities

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

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities") as well as previous conclusions of non-conformity or deferrals.

It previously found that the situation in Andorra was in conformity with Article 15§2 of the Charter (Conclusions 2016).

Legal framework

The Committee previously took note of the following relevant legislation: Law of 17 October 2002 on the Rights of Persons with Disabilities, which prohibits any discrimination against persons with disabilities and provides for the requirement of reasonable accommodation; Law No. 35/2008 on workplace relations and the Regulation of 17 November 2004 on the employment and social security of persons with disabilities, which encourage the recruitment of persons with disabilities; Law No. 6/2014 on social and medico-social services, which details the technical aids available (see Conclusions 2012, 2016).

In February 2019 (outside the reference period), a new law on employment came into force (Law No. 4/2919 of 31 January – *Llei d'ocupació).* The report states that the law contains the necessary measures to secure the subjective right to employment for persons with disabilities and to establish an efficient, preventive and proactive system of protection against unemployment. The Committee asks that the next report explain the main amendments introduced by the law regarding the employment of persons with disabilities. It furthermore asks whether the assessment of disability in the field of employment takes into account the personal and environmental factors interacting with the individual.

Access of persons with disabilities to employment

Following the introduction, in 2016, by the Employment Office of a new specific assisted occupational integration programme, 97 persons benefited from this in 2017 (20 of whom were taken on at the end of the year: two in the public sector and 18 in the private sector) and 154 in 2018 (41 of whom were taken on at the end of the year: 16 in the public sector and 25 in the private sector). The Committee notes that, according to the statistics provided in the report, there were in total 1,648 persons with disabilities in Andorra in 2018. It asks that the next report provide up-to-date figures relating to the reference period, on the total number of persons with disabilities, specifying how many of them are active and in work (in the public and private sector, and in the open labour market or in sheltered employment) and how many are unemployed.

Measures to promote and support the employment of persons with disabilities

The Committee refers to its previous conclusions as regards the different measures provided to encourage employment of persons with disabilities under the Law of 17 October 2002 (state aid to encourage self-employment, schemes aimed at facilitating the transfer of persons with disabilities from sheltered employment to the open labour market, special conditions applying to apprenticeship, temporary and flexible contracts – see Conclusions 2012) and the sheltered employment programmes (AGENTAS, XERIDELL and the socio-professional training programme aimed at providing persons with physical or sensory disabilities access to the open labour market – see Conclusions 2012 for details).

The report indicates that in 2016, the Employment Office of Andorra launched a strategy for integrating persons with disabilities in the labour market. In reply to the Committee's request (Conclusions 2016), the report explains the functioning of the specific programme put in place in this context. The report also refers to the setting up for the period 2016-2019 of a Network of Inclusive Enterprises (*Xarxa d'Empreses Inclusives*), which benefits from several occupational integration assistance services (specialised guidance for applicants, support and assistance in the enterprise before taking up duties, monitoring of recruitment, purchase of assistance items, etc.) and incentives (subsidies and exemption from contributions). Thanks to these measures, 25 posts in the open labour market were offered to workers with disabilities by the more than 20 enterprises which are members of the Network.

Remedies

In its previous conclusions (Conclusions 2016), the Committee considered that the remedies available to persons with disabilities in case of discrimination in the employment field were in conformity with the Charter (administrative appeal, followed if need be by a judicial appeal, against the decisions of the National Evaluation Commission; complaint to Ministry of Health, Social Affairs and Employment or with the labour inspectorate, leading for example to a civil procedure for compensation for discriminatory dismissal under Article 98.5 of Law No. 53/2008 on the Labour Relations Code; complaint to the Mediator or the Andorran Federation of Persons with Disabilities, without binding effect).

Conclusion

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

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

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

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

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities") as well as previous conclusions of non-conformity or deferrals.

The Committee previously concluded that the situation in Andorra was not in conformity with Article 15§3 of the Charter on the grounds that it had not been established that housing, transport and communication were covered by the anti-discrimination legislation and it had not been established that there are were remedies available to persons with disabilities alleging discriminatory treatment (Conclusions 2016).

Relevant legal framework and remedies

The Committee considers that Article 15 reflects and advances the change in disability policy that has occurred over the last two decades, away from welfare and segregation and towards inclusion, participation and agency. In light of this, the Committee emphasises the importance of the non-discrimination norm in the disability context and finds that this forms an integral part of Article 15§3 of the Revised Charter. The Committee in this respect also refers to Article E on non-discrimination.

In its previous conclusions, the Committee had noted that the Law of 17 October 2002 on the Rights of Persons with Disabilities ensured and encouraged access, on an equal footing, by persons with disabilities to culture, leisure and sport but it considered that it had not been established that the areas of housing, transport and communication were also covered and that there were effective remedies in the case of discriminatory treatment in these fields (Conclusions 2012 and 2016).

In this connection, the report indicates that the above-mentioned law was amended by Law No. 27/2017 of 30 November 2017 aimed at aligning the legislation with the United Nations Convention on the Rights of Persons with Disabilities and that it now prohibited any distinction, exclusion or restriction on the ground of disability which had the purpose or effect of impeding or nullifying the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural and other fields. The refusal to make reasonable accommodation is therefore deemed to be discrimination on the ground of disability. Subsequently, a new law was passed outside the reference period on 15 January 2019 which entered into force on 21 March 2019 (Law on Equal Treatment and Non-Discrimination – *Llei per a la igualtat de tracte i la no-discriminaci)* and which regulates the right to judicial protection, and administrative and institutional guardianship where there has been a violation of the right to equal treatment and to non-discrimination . The Committee asks for the next report to provide further information on this law and its implementation in the light of the relevant case law

Consultation

The Committee recalls that Article 15§3 of the Charter requires inter alia that persons with disabilities should have a voice in the design, implementation and review of coordinated disability policies aimed at achieving the goals of social integration and full participation of persons with disabilities. It asks the next report to provide updated information on consultation with people with disabilities, as well as other measures to ensure their participation in the design, implementation and review of disability policies.

Measures to ensure the right of persons with disabilities to live independently in the community

Financial and personal assistance

The Committee previously took note of the financial assistance available for persons recognised as having disabilities by the National Evaluation Commission (CONAVA), namely the solidarity pension for persons with disabilities, a non-contributory benefit (see also Conclusions 2012 on health insurance coverage).

Regarding the personal assistance service referred to in the report, the Committee notes that:

- 164 persons benefited from the Home Help Services (*Servei d'Atenció Domiciliària*, SAD);
- two persons benefited from the Personal Assistance Service (*Servei d'Assistent Personal*), a support which is provided by a personal assistant to anyone requiring extensive support to achieve full independence and who has a recognised disability;
- nine persons benefited from the independent living programme entitled *I am going home*, for persons with intellectual disabilities and/or a related mental disorder, who need personal assistance to manage their day-to-day lives.

  The Committee asks the next report to provide uptodate information on the personal assistance scheme; the legal framework, the implementation of the scheme, the number of beneficiaries, and the budget allocated. It also asks whether funding for personal assistance is granted based on an individual needs' assessment and whether persons with disabilities have the right to choose services and service providers according to their individual requirements and personal preferences. Further the Committee asks what measures have been taken to ensure that there are sufficient numbers of qualified staff available to provide personal assistance.

  The prevalence of poverty amongst people with disabilities in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of state efforts to ensure the right of people with disabilities to enjoy independence, social integration and participation in the life of the community.

  The obligation of states to take measures to promote persons with disabilities' full social integration and participation in the life of the community is strongly linked to measures directed towards the amelioration and eradication of poverty amongst people with disabilities. Therefore, the Committee will take poverty levels experienced by persons with disabilities into account when considering the state's obligations under Article 15§3 of the Charter. The Committee asks the next report to provide information on the rates of poverty amongst persons with disabilities as well as information on the measures adopted to reduce such poverty, including non-monetary measures.

  Information should also be provided on measures focused on combatting discrimination against, and promoting equal opportunities for, people with disabilities from particularly vulnerable groups such as ethnic minorities, Roma, asylum-seekers and migrants.

  States should also make clear the extent to which the participation of people with disabilities is ensured in work directed towards combatting poverty amongst persons with disabilities.

Technical aids

Regarding technical aids, the Law of 24 April 2014 on Social and Medico-Social Services (as supplemented since 2017 by the Rules on technical and technological aids of the social and medico-social assistance and the Portfolio of social and medico-social services) sets out the

content and classification of technical aids for adapting the home, reducing architectural barriers, facilitating communication, purchasing assistance items and assisting persons with functional and communication disorders (see also Conclusions 2016). In reply to the Committee's question on the implementation of this law, the report indicates an increase, between 2017 and 2018, in the number of aids granted (from 150 to 256) and in their amount (from €315 313 to €493 200).

The report also indicates that different services exist, which provide guidance and advice on the use of assistance items, technical aids or home adaptations. Such services are provided within the Ministry of Social Affairs, Housing and Youth, the Technical Aids Bank (*Banc d'Ajudes Tècniques*), or the Service for Personal Autonomy (*Servei per a l'Autonomia Personal*). In 2018, 70 persons with disabilities or in a situation of dependency were taken care of by the Technical Aids Bank and 88 persons had a consultation with the Service for Personal Autonomy in relation to the assistance items.

Housing

With regard more specifically to housing, reference is made to the Committee's previous conclusions concerning the aid granted for financing rented accommodation and renovation work (see Conclusions 2012 and 2016). In reply to the Committee's question, the report explains that assistance for home adaptation is provided to persons who are highly dependent while for the others, assistance is co-financed and granted until the funds are used up (*prestació de concurrència*). It is nonetheless possible to request ad hoc financial assistance (under the Rules on social and medico-social welfare benefits of 2016).

The Committee asks the next report to provide information on the progress made to phase out large institutions (including information on measurable targets clear timetables and strategies to monitor progress) and whether there is a moratorium on any new placements in large residential institutions. It asks what proportion of private and public housing is accessible. It asks for information about the existence of accessible sheltered housing.

Communication

The technical aids provided for by the above-mentioned laws of 2014 and 2017 also cover access to communication and new technologies (including interpretation in sign language). According to the report, further measures are expected to improve the access of persons with disabilities to public services and to means of communication.

The Committee asks the next report to provide information on the measures taken to ensure sufficient accessibility to all public and private information and communication services, including television and the Internet, for all persons with disabilities.

Mobility and transport

In the field of mobility and transport, persons recognised as having disabilities are entitled to the "blue card" which gives free access to intercity public transport and in the case of reduced mobility, they may qualify for grants to adapting their vehicle (Conclusions 2012 and 2016).

The Committee asks the next report to provide information on the proportion of buildings that are accessible to persons with disabilities as well as information on sanctions that are imposed in the event of a failure to respect the rules regarding the accessibility of buildings (including the nature of sanctions and the number imposed). It also asks for information on monitoring mechanisms to ensure the effective implementation of the rules.

Culture and leisure

Regarding culture and leisure, the Committee refers to its previous conclusions (Conclusions 2012 and 2016) in which it had taken note of the programmes for the social integration of children and young people and of the sports activities accessible to persons with intellectual disabilities in the *Special Olímpic Andorra* (SOA) Federation.

The Committee asks for the next report to include any developments which have happened during the reference period in all these areas.

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 notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

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

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

The Committee notes that this report responds to the targeted questions on this provision, which relate specifically to equal pay (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities"). The Committee will therefore focus specifically on this aspect. It will also assess the replies to all findings of non-conformity or deferral in its previous conclusion.

Obligations to guarantee the right to equal pay for equal work or work of equal value

Legal framework

In its previous conclusions (Conclusions 2012 and 2016), the Committee noted that equal pay for work of equal value was enshrined in the non-discrimination principle laid down in Article 74 of Law No. 35/2008 on the Labour Relations Code, which explicitly requires employers to abide by the principles of equality and non-discrimination with regard to pay. As a general rule, the Labour Relations Code generally states that any discriminatory practice is null and void.

The Committee notes the Equal Treatment and Non-Discrimination Act, No. 13/2019 of 15 February 2019 (entered into force on 21 March 2019, outside the reference period), which defines the principle of equal pay between men and women. Under Article 13(1), the principle entails an obligation to provide the same remuneration, whatever the nature of this remuneration, for work of equal value, without any form of discrimination against women regarding the elements or conditions of the work in question. The Committee notes that the legislation applies to both private and public sectors.

The Committee also notes from the report that the Industrial Relations Act, No. 31/2018 of 6 December 2018 (which was amended by the Equal Treatment and Non-Discrimination Act, No. 13/2019, and which came into force on 1 February 2019, outside the reference period) states explicitly that women must not be subject to any discrimination concerning the elements or conditions of their remuneration.

In the light of the foregoing, the Committee concludes that the obligation to recognise the right to equal pay has been respected.

Effective remedies

The Committee recalls that domestic law must provide for appropriate and effective remedies in the event of alleged pay discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court. Effective access to courts must be guaranteed for victims of pay discrimination. Therefore, proceedings should be affordable and timely. Anyone who suffers pay discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and to act as a deterrent. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and from being sufficiently dissuasive is contrary to the Charter. The burden of proof must be shifted. The shift in the burden of proof consists in ensuring that where a person believes she or he has suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of non-discrimination (Conclusions XIII-5, Statement of interpretation on Article 1 of the 1988 Additional Protocol). Retaliatory dismissal in cases of pay discrimination must be forbidden. Where a worker is dismissed on grounds of having made a claim for equal pay, the worker should be able to file a complaint for dismissal without valid reason. In this case, the employer must reinstate her/him in the same or a similar post. If reinstatement is not possible,

the employer must pay compensation, which must be sufficient to compensate the worker (i.e. cover pecuniary and non-pecuniary damage) and to deter the employer (see in this respect collective complaints Nos. 124 to 138, University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, 5-6 December 2019).

The Committee has previously found that the situation regarding effective remedies was in conformity with the Charter.

According to the report, under Article 71bis of the Industrial Relations Act, No. 31/2018 of 6 December 2018 (which came into force on 21 March 2019, outside the reference period), when courts find that there has been gender pay discrimination, in determining the level of compensation for the damages incurred they must take account of all the differences in remuneration arising from the unequal treatment for the entire period to which the discrimination has been found to apply. However, the report does not state whether there is a maximum level of compensation for the victims of gender pay discrimination.

The Committee refers to its previous conclusion on Article 4§3 (Conclusions 2018), where it notes that under Article 98.1 of the Labour Relations Code, dismissal on the ground of discrimination shall give rise to reparatory measures in favour of the employee, who can choose between compensation (at least 3 months of salary but a maximum of 30 months of salary) or reinstatement with compensation of damages, the amount of which is fixed by the competent jurisdiction (without a ceiling). If the employee chooses compensation, there is a ceiling of 30 months of salary, but not if he/she chooses reinstatement.

The Committee recalls once more The Committee recalls that anyone who suffers wage discrimination on grounds of gender must be entitled to adequate compensation. In this connection, the Committee makes a distinction between compensation that is granted in cases of successful unequal pay claims and compensation/severance pay that is granted in retaliatory dismissal cases, even when the latter are the result of equal pay claims. In the first case no ceiling can be established by law. In the second case, a ceiling established by law is permissible under the Charter, only if its level is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender. The Committee asks whether the new Equal Treatment and Non-Discrimination Act, No. 13/2019 of 15 February 2019, sets a maximum limit on the compensation that can be paid in cases of gender pay discrimination.

According to the report, no complaints have been lodged with the relevant judicial bodies, the Supreme Court of Justice and the *Batllia* (the court of first instance in civil and administrative cases) concerning failure to comply with the equal pay principle and there have been no relevant findings against employers. Bearing in mind the significant pay gap (see below), the Committee asks for information in the next report on measures taken to raise awareness of the relevant legislation, to enable the competent authorities, particularly the courts and other public officials, to identify and deal with cases of discrimination based on gender and unequal pay, and to consider whether, in practice, the relevant material provisions and legal procedures permit the successful processing of complaints.

With regard to shifting *the burden of proof*, the Committee noted previously that courts apply the *in dubio pro operario* rule established as a general principle in the Labour Relations Code and they may refer to the relevant legislation of the European Union and its member states. The current report states that Article 25 of the Equal Treatment and Non-Discrimination Act, No. 13/2019 (outside the reference period), reverses the burden of proof. The Committee will examine the new legislation in the next conclusion on this thematic group. In the meantime, it notes that the situation remains in conformity with Article 20 of the Charter in this regard.

The Committee also notes from the fourth periodic report submitted by Andorra in 2018 to the UN Committee on the Elimination of Discrimination against Women (CEDAW/C/AND/4) that acts that constitute discriminatory practices with regard to access to employment, dismissal

or the application of disciplinary procedures, and differences in salary, conditions of work or professional career development have been classified as offences in the Criminal Code.

In the light of the foregoing and pending receipt of the information requested, the Committee considers that the obligation to ensure effective and adequate remedies in cases of gender pay discrimination has been fulfilled.

Pay transparency and job comparisons

The Committee recalls that pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value. Transparency contributes to identifying gender bias and discrimination and it facilitates the taking of corrective action by workers and employers and their organisations as well as by the relevant authorities. States should take measures in accordance with national conditions and traditions with a view to ensuring adequate pay transparency in practice, including measures such as those highlighted in the European Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, notably an obligation for employers to regularly report on wages and produce disaggregated data by gender. The Committee regards such measures as indicators of compliance with the Charter in this respect. The Committee also recalls that, in order to establish whether work performed is equal or of equal value, factors such as the nature of tasks, skills, as well as educational and training requirements must be taken into account. States should therefore seek to clarify this notion in domestic law as necessary, either through legislation or case law. In this respect, job classification and evaluation systems should be promoted and where they are used, they must rely on criteria that are gender-neutral and do not result in indirect discrimination (see in this respect Complaints Nos.124 to 138, UWE, *op. cit*.).

The Committee asks that the next report provide information as regards particular measures provided by national law regarding pay transparency in the labour market and notably the possibility for workers to receive information on pay levels of other workers and available information on pay.

The report indicates that, under Article 18 of the Equal Treatment and Non-Discrimination Act, No. 13/2019 of 15 February 2019 (which came into force on 21 March 2019, outside the reference period), public authorities and other public bodies, together with private undertakings and other private bodies, must offer effective protection against discrimination and, in particular, apply adequate methods and instruments for identifying discrimination and take appropriate steps to deal with and put an end to discriminatory practices. The Committee notes from the report that non-compliance with these obligations gives rise to administrative and civil liability for damages incurred, and where relevant criminal liability.

According to the report, the decree of 27 October 2004 approving the classification of occupations establishes a uniform list of occupations to be used in recruitment procedures and the compilation of statistics.

Regarding job comparisons, the Committee notes that it has found the situation to be in conformity with Article 20 (Conclusions 2016). It noted that it was possible to compare employees' pay by sex or by occupation within specific sectors of activity thanks to the data on average pay collected in the labour force survey. The latter provided the following information on the active population: a classification of occupations based on the national occupations classification (see above), average weekly working hours and normal net monthly salaries.

The Committee asks to provide information on whether the law prohibits discriminatory pay in statutory regulations or collective agreements, as well as whether the pay comparison is possible across one company, for example, if such company is a part of a holding company and the remuneration is set centrally by such holding company.

The Committee notes that the criteria for identifying work of equal value are laid down in domestic legislation. Under Article 13(2) of the Equal Treatment and Non-Discrimination Act, No. 13/2019 of 15 February 2019 (which came into force on 21 March 2019, outside the reference period), these are occupational or professional knowledge and skills, effort and capabilities required, level of responsibility and physical, mental and psycho-social demands.

The Committee notes that on 15 January 2015, the *Consell General* approved an agreement on the promotion of equality of the sexes, which would give rise to a White Paper on equality. The White Paper was presented to the *Consell General* on 7 May 2018 at a session open to the general public. This is a technical document offering a detailed analysis of the equality situation in Andorra so that appropriate policies can be agreed to implement its conclusions. According to the country's aforementioned 2018 report to the UN Committee on the Elimination of Discrimination against Women, the White Paper's recommendations and conclusions refer specifically, *inter alia,* to the need for an equality strategy and legislation on equality and non-discrimination (in particular, Act 13/2019, which is already in force), the establishment of an equality observatory and of a forum for dialogue between the public authorities and the service sector, and the framing of practical equality policies. The Committee asks for information in the next report on measures taken to ensure equality of the sexes following approval of the White Paper and the results achieved.

Enforcement

The report indicates that in a decree of 23 September 2015, the Health, Social Affairs and Employment Ministry established an Equality Policies Department. Following a decree of 27 January 2016 establishing the Social Affairs, Justice and Interior Ministry, the equality policy sector was attached to the Social Affairs Department. One of the sector's tasks is to strengthen and improve efforts to combat inequality and discrimination suffered by the most vulnerable groups concerned. The Committee requests information on practical steps taken by this sector on behalf of equal pay.

The Committee requests that the next report provide further information about how equal pay is ensured, notably, about the monitoring activities conducted in this respect by the Labour Inspectorate and other competent bodies.

Obligations to promote the right to equal pay

The Committee recalls that in order to ensure and promote equal pay, the collection of high-quality pay statistics broken down by gender as well as statistics on the number and type of pay discrimination cases are crucial. The collection of such data increases pay transparency at aggregate levels and ultimately uncovers the cases of unequal pay and therefore the gender pay gap. The gender pay gap is one of the most widely accepted indicators of the differences in pay that persist for men and women doing jobs that are either equal or of equal value. In addition, to the overall pay gap (unadjusted and adjusted), the Committee will also, where appropriate, have regard to more specific data on the gender pay gap by sectors, by occupations, by age, by educational level, etc. The Committee further considers that States are under an obligation to analyse the causes of the gender pay gap with a view to designing effective policies aimed at reducing it (see in this respect Complaints Nos.124 to 138, UWE, *op. cit*.).

According to data in the report, the global pay gap between men and women was 22.17% in 2018, compared with 22.57% in 2017, 23.24% in 2016 and 22.4% in 2015. The Committee notes that although the 2008 Labour Relations Code lays down the principle of equality and non-discrimination with regard to pay, it is not sufficient to eradicate this form of discrimination, which, according to the report, derives from forms of vertical and horizontal segregation associated with gender stereotypes.

The Committee finds that there is a significant wage gap between men and women in Andorra that has not been greatly reduced during the reference period. While noting the recent

enactment of new legislation (in particular, the Equal Treatment and Non-Discrimination Act, No. 13/2019 of 15 February 2019), it asks for the next report to provide updated information on the specific measures and activities implemented to promote gender equality, overcome gender segregation in the labour market and reduce the gender pay gap, together with information on the results achieved. In the meantime, the Committee finds that the situation is not in conformity with Article 20 (c) of the Charter on the ground that the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

Conclusion

The Committee concludes that the situation in Andorra is not in conformity with Article 20 (c) of the Charter on the ground that the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.