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# EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2020

**AUSTRIA**

*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 Austria, which ratified the Revised European Social Charter on 20 May 2011. The deadline for submitting the 8<sup>th</sup> report was 31 December 2019 and Austria submitted it on 14 February 2020.

The Committee recalls that Austria 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 1196<sup>th</sup> 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).

Austria has accepted all provisions from the above-mentioned group except Articles 15§2, 18§3 and 24.

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

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

- 6 conclusions of conformity: Articles 1§1, 1§4, 10§1, 10§3, 10§4 and 15§1.
- 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 Austria under the Revised Charter.

The next report from Austria 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](http://www.coe.int/socialcharter).

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

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

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

#### ***Employment situation***

According to Eurostat, the GDP growth rate more than doubled during the reference period, moving from 1% in 2015 to 2.6% in 2018, a rate which is higher than the average for the 28 European Union (EU) member States (2% in 2018).

The overall employment rate (persons aged 15 to 64 years) increased from 71.1% in 2015 to 73% in 2018, exceeding the EU 28 average (68.6% in 2018).

The employment rate for men increased from 75.1% in 2015 to 77.4% in 2018, a rate which is higher than the EU 28 average (73.8% in 2018). The employment rate for women increased from 67.1% in 2015 to 68.6% in 2018, which is higher than the EU 28 average (63.3% in 2018). The employment rate for older workers (55 to 64-year-olds) rose from 46.3% in 2015 to 54% in 2018, which is below the EU 28 average (58.7% in 2018). The employment rate for young people (15 to 24-year-olds) remained stable, at 51.3% in 2015 and 2018, which is well above the EU 28 average (35.3% in 2018).

The overall unemployment rate (persons aged 15 to 64 years) fell from 5.8% in 2015 to 4.9% in 2018, a rate which is below the EU 28 average (7% in 2018).

The unemployment rate for men decreased from 6.2% in 2015 to 5.1% in 2018, a rate which is below the EU 28 average (6.7% in 2018). The unemployment rate for women decreased from 5.4% in 2015 to 4.7% in 2018, which is below the EU 28 average (7.2% in 2018). Youth unemployment (15 to 24-year-olds) fell from 10.6% in 2015 to 9.4% in 2018, which is below the EU 28 average (15.2% in 2018). Long-term unemployment (12 months or more, as a percentage of overall unemployment for persons aged 15 to 64 years) fell slightly, from 29.2% in 2015 to 28.9% in 2018, which is well below the EU 28 average (43.4% in 2018).

The proportion of 15 to 24-year-olds “outside the system” (not in employment, education or training, i.e. NEET) decreased from 7.5% in 2015 to 6.8% in 2018 (as a percentage of the 15 to 24-year-old age group), a rate which is below the EU 28 average (10.5% in 2018).

The Committee notes that the economic situation improved during the reference period and that this positive trend went hand in hand with favourable developments in the labour market (an increase in the employment rate and falling unemployment).

#### ***Employment policy***

In response to the Committee’s request (targeted questions), the report refers to the “Basic Information Report, Reporting Year 2016/2017 – Labour Market Policy – Institutions, Procedures, Measures” (BIR) as well as to the report “Youth and Work in Austria (2016/2017)”.

The Committee notes the key role of the Public Employment Service (PES) in the implementation of national employment policy based notably on individual action plans being drawn up for each unemployed jobseeker. It also notes that according to the report Austria’s labour market policy displays no pronounced regional component, and consequently no action at regional level is currently required.

According to BIR, preventing youth unemployment has been a priority of Austrian labour market policy for many years. Since in Austria there is a clear correlation between the risk of unemployment and the level of education and training, the PES’s service to young people is aimed at helping all young jobseekers to complete formal vocational training. This goal is supported by the Government’s Training Guarantee (*Ausbildungsgarantie*), which guarantees vocational training to all young people. Since 2015, a special focus has been on young persons eligible for asylum or for subsidiary protection.

With respect to persons from migrant backgrounds, BIR points out that the unemployment rate of persons from this group was 15.3% (women 15.1%, men 15.5%) in 2016 representing an increase of 4.8% over the previous year. The report further states that the needs of persons belonging to this group vary greatly and so do the programmes offered by the PES. They range from simple placement support via German language courses, vocational training and continuing training to specialised counselling and assistance by entities cooperating with the PES. Assistance centres for migrants address issues such as settlement, right of access to the labour market, academic validation and recognition of certificates and titles acquired abroad as well as legal concerns. The Committee asks to receive updated information on the situation of this group in the next report.

BIR also provides information on measures and services aimed at older workers, women and persons with disabilities.

The Committee takes note of the detailed statistical information contained in the report and its appendices. With respect to the activation rate, the Committee notes from European Commission data that it increased from 21.2% in 2015 to 27.2% in 2018.

As regards public expenditure on labour market policies (as a share of GDP), the report provides OECD data according to which the share of GDP amounted to 2.07% in 2018 which was a slight decrease compared to 2015 (2.21%). This decrease was primarily due to a drop in expenditure on passive measures (1.47% in 2015, 1.32% in 2018) whereas expenditure on active measures remained largely stable (0.74% in 2015, 0.75% in 2018).

The Committee finally takes note of the comments submitted by the *Bundesarbeitskammer* (BAK) according to which several recent employment policy measures taken by the Government increase the pressure on the unemployed to accept low quality and low-paid jobs. BAK further asserts that the budget for active measures was reduced markedly [although in part outside the reference period, i.e. in 2019], that the *Aktion 20,000+* scheme providing job opportunities in the public and/or voluntary sector for long-term unemployed persons over the age of 50 was suspended and that there was a reduction in the number of jobs offered in employment projects, also for lack of budget. According to BAK these policy developments make it difficult for certain vulnerable categories to benefit from the generally improved employment situation. The Committee asks that the next report contain the Government's response to the views expressed by BAK on these various points.

Nevertheless, in view of the information provided on the employment policy effort and having regard to the main unemployment figures, most of which improved slightly during the reference period, the Committee considers that the situation remained compatible with the requirements of Article 1§1 of the Charter.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Austria 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 Austria.

### **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, accordingly, focus its assessment specifically on these aspects. It will also examine responses to any findings of non-conformity or deferrals of its previous conclusion.

The Committee recalls that Austria has accepted Article 20 of the Charter, but it has not accepted Article 15§2 of the Charter. The Committee will therefore examine the domestic legislation prohibiting discrimination based on disability and related issues under this provision.

As regards the legislation prohibiting discrimination in general terms, the Committee examined the legal framework prohibiting discrimination in employment in its previous conclusions. It noted that the Equal Treatment Act (*Gleichbehandlungsgesetz*, "GIBG") covers the private sector and protects against discrimination in employment on the following grounds: gender, ethnic affiliation, religion or belief, sexual orientation and age. The Federal Equal Treatment Act (*Bundes-Gleichbehandlungsgesetz*, "B-GIBG") covers (federal) public employment and protects against discrimination on the following grounds: gender, ethnic affiliation, religion and belief, sexual orientation and age (Conclusions 2016, Conclusion XX-1 (2012)).

With regard to discrimination in employment on grounds of disability, the report refers to the information provided under Article 15 (1) and (3). The Committee notes that the report provides information on the measures taken to support employment for young people with disabilities, job-coaching schemes and measures taken by the Public Employment Service.

The Committee asks whether discrimination in employment on grounds of disability is prohibited by the relevant legislation such as the Federal Disability Act (*Bundesbehindertengesetz*) and the Disability Employment Act (*Behinderteneinstellungsgesetz*). The Committee asks whether the duty on employers to provide reasonable accommodation for people with disabilities in the area of employment is provided by the legislation. It also asks how legislation is enforced, and seeks information on the body/structure responsible to deal with cases of alleged discrimination and its functioning, as well as examples of case law.

With regard to discrimination based on ethnic affiliation and religion or belief, the Committee notes that according to the 2019 country report on non-discrimination of the European Equality Law Network, over the past few years, there has been a steep rise in anti-Muslim resentment in Austria. The same report indicates that the perception of Muslims has shifted toward a very hostile discourse. The Committee requests information on the measures taken to ensure that the relevant legislation prohibiting discrimination in employment on grounds of ethnic affiliation and religion is enforced, and on any particular measures taken to ensure equal access to and conditions of employment to people of various ethnicities or religions, including Muslims.

The Committee takes note of the information in the report of the case law of the courts dealing with cases of discrimination on the grounds of ethnic affiliation, age, sexual orientation, gender and religion.

As regards measures taken to counteract discrimination in the employment of migrants and refugees, the report indicates that migrants and third-country nationals entitled to freedom of movement in the Austrian labour market enjoy the same legal position as employees not having a migrant background. The report further states that direct or indirect discrimination of employees on the basis of ethnic origin is prohibited. Discrimination is prohibited in particular in connection with: establishing an employment relationship; determining pay levels; granting voluntary social benefits; measures of training, retraining and further education; career development and promotion especially; other working conditions; and termination of the employment relationship. The Committee requests information on the concrete measures taken to enforce the above-mentioned legislation and ensure that migrants and refugees have access to employment with no discrimination.

The Committee recalls that appropriate and effective remedies must be ensured in the event of an allegation of discrimination. The notion of effective remedies encompasses judicial or administrative procedures available in cases of an allegation of discrimination, an appropriate adjustment of the burden of proof which should not rest entirely on the complainant, as well as the creation of a special, independent body to promote equal treatment. The Committee explicitly requested that information on these aspects be provided for this examination cycle.

With regard to the procedures available, the Committee notes that victims of discrimination can complain to the Equal Treatment Commission or Federal Equal Treatment Commission (for the public service) and to the courts. The Committee notes from the 2019 country report on non-discrimination of the European Equality Law Network that the decisions of the civil and labour courts are legally binding decisions, whereas the procedures at the Equal Treatment Commission only result in a non-binding 'opinion'. The Equal Treatment Commission cannot impose any sanctions.

The Committee further notes the criticism in the 2019 country report of the European Equality Law Network that a serious problem with the implementation of legislation is the persistent lack of relevant case law. Victims of discrimination cannot be sure of the outcome of their proceedings. If they bring a lawsuit, they have to bear the full risk and cost of the proceedings. Although NGOs try to accommodate victims in this respect, limited resources and the victims' fear of suffering another setback during court proceedings make them shy away from judicial redress. The status of NGOs in court is limited to the possibility of intervention, and this is granted only to an umbrella organisation, Litigation Association of NGOs against Discrimination (*Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern*), for all grounds, while the possibilities for *actio popularis* are limited to the ground of disability. The same report indicates that at the moment, a number of people who face discrimination tend to initiate a free-of-cost proceeding before the Equal Treatment Commission before or instead of addressing the courts. The Committee asks information on the cost of court proceedings in discrimination cases, the availability and conditions of legal aid for victims of discrimination.

With regard to the amount of compensation awarded to victims of discrimination, the Committee previously noted (Conclusions 2016) that any person who considers herself/himself a victim of discrimination may lodge a complaint based on the provisions of the Equal Treatment Act before a court of law. In case the principle of equal treatment is violated, the compensation awarded may consist in:

- compensation for financial losses, i.e. actual harm caused (*positiver Schaden*) and loss of profit; or
- creating/restoring a discrimination-free situation;
- and, in both cases, additionally:
- compensation for the immaterial damage and the personal impairment suffered.



The Committee previously asked whether there was a ceiling/pre-defined upper limit to compensation in cases of discrimination in employment (in relation to recruitment or employment conditions in general) (Conclusions 2016).

The current report indicates that according to the Equal Treatment Act, compensation for non-pecuniary damage in the case of non-recruitment and non-promotion is limited to a maximum of EUR 500 if the employer proves that the victim would not have been recruited or promoted had no discrimination occurred (so that discrimination did not have the effect of non-promotion or non-recruitment but caused only exclusion from the selection procedure).

The report indicates that for a person who would have been employed or promoted if the choice had been non-discriminatory (in other words, in the event that the discrimination proves decisive in non-employment/non-promotion), the law does not define any maximum amount but rather a minimum amount. Following an amendment to the Equal Treatment Act which entered into force on 1 March 2011, the minimum amount of damages in the context of the establishment of an employment relationship is at least two months' pay with the addition of compensation for the immaterial damage suffered (Equal Treatment Act, § 26(1)). In the case of career advancement, the amount of damages continues to be the difference in pay for at least three months with the addition of compensation for the immaterial damage suffered (Equal Treatment Act, § 26(5)).

The report indicates that as for the other discriminatory acts, no maximum amount of damages is defined.

The Committee asks information on the remedies available for victims in case of discriminatory termination of employment.

With regard to sanctions, the Committee notes that the Equal Treatment Act provides for administrative penal proceedings for discriminatory job and housing advertisements; however, the maximum penalty is EUR 360 and punishment for employers is excluded for first-time offenders (they only face admonition/warning).

The Committee recalls that under article 1§2 of the Charter remedies available in cases of discrimination must be adequate, proportionate and dissuasive.

The Committee notes that under the Equal Treatment Act, compensation for non-pecuniary damage in the case of non-recruitment and non-promotion is limited to a maximum of EUR 500 (in case the employer proves that the victim would not have been recruited or promoted had no discrimination occurred). Under the same Act, a maximum administrative fine of as low as EUR 360, and exclusion of punishment for employers as first-time offenders (warning only) in cases of discriminatory job advertisements is established. The Committee further notes in the examples of case law provided in the report that the courts are awarding only very low amounts of compensation for immaterial damage in practice.

The Committee asks that the next report provide examples of court decisions dealing with discrimination in employment, with specific information on the measures taken and sanctions imposed on employers, as well as the amount of compensation granted to the victims of discrimination (to cover the material and immaterial damage suffered). Pending receipt of the information requested, the Committee reserves its position on this point.

As regards the burden of proof, no information is provided in the report. The Committee notes in the examples of case law provided that in several cases, the courts considered that the "claimant [the employee who claimed to be victim of discrimination] was not able to plausibly demonstrate any discrimination." The Committee asks whether legislation requires a shift of the burden of proof from the complainant to the respondent, in what conditions and which is the practice of the courts in this sense. It reserves its position on this point.

With regard to equality bodies, the Committee refers to its previous conclusion where it took note of the competence, organisation and proceedings of the Equal Treatment Commission and of the Equal Treatment Ombudsman's Office. It notes the information provided by the

current report regarding the activities of the Equal Treatment Commission and the Federal Equal Treatment Commission. The Committee notes, in this respect that the 2019 country report of the European Equality Law Network found that the resources for the federal equality bodies are very limited. The same report indicates that the National Equality Body (*Anwaltschaft für Gleichbehandlungsfragen, Gleichbehandlungsanwaltschaft*) is still understaffed and the members of the Equal Treatment Commission (*Gleichbehandlungskommission*) are not being paid for this task, but perform their functions in addition to their jobs on a voluntary basis (which delays decisions). The Committee asks that the next report comment on the above-mentioned observations/ to provide information on the measures taken to address these shortcomings.

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 Musselle 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 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 and 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 the worker to earn his 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 work and the “gig economy” or “platform economy”.

The Committee notes that the present report replies to the specific, targeted questions for this provision on forced labour including the “gig economy” workers (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”).

### **Criminalisation and effective prosecution**

The Committee notes that Austria has ratified the International Labour Organization (ILO) conventions on forced and compulsory labour (No. 29) and on the abolition of forced labour (No. 105). In 2019, Austria additionally ratified the 2014 Protocol to the Forced Labour Convention of 1930.

With regard to human trafficking, Section 104a of the Criminal Code (*Strafgesetzbuch*, StGB), Federal Law Gazette I no. 60/1974), provides that a prison sentence of six months to five years may be applied to anyone who, with the intent of allowing the exploitation of a person of majority age, uses unfair means against that person and solicits that person, gives the person accommodation or otherwise harbours the person, transports the person, or offers or passes the person on to another party. Unfair means include use of violence or dangerous threat, misrepresentation of facts, exploitation of a position of authority, of a difficult situation, a mental disease or a condition which makes the person defenceless, as well as intimidation and granting or accepting an inducement for the handover of the person in question.

A term of imprisonment from one to ten years has to be imposed on anyone who, with the intent of exploitation, solicits a minor, gives that person accommodation or otherwise harbours the person, transports the person, or offers or passes the person on to another party.

Section 104a defines five forms of exploitation related to human trafficking: sexual exploitation, removal of organs, exploitation of labour, exploitation through forced begging and exploitation through forced commitment of punishable acts.

With regard to slavery, pursuant to Section 104 of StGB, a sentence of ten to twenty years of imprisonment shall be imposed if whoever engages in slave trade or otherwise deprives a person of his or her personal freedom by subjecting him or her to any type of slavery, or puts a person into a position similar to slavery, or acts in a way that another person is enslaved or is put into a position similar to slavery, or puts himself or herself into a position of slavery or similar to slavery.

Article 116 of the Law on Migration Police (§ 116 *Fremdenpolizeigesetz*) (“*Ausbeutung eines Fremden*”) protects from exploitation anyone who is not an Austrian citizen and finds themselves in a situation of particular dependency (“*in einem besonderen Abhängigkeitsverhältnis*”). The offence is punishable by imprisonment for a term that does not exceed three years. These provisions protect all foreigners without residence permits from exploitation.

According to the report, the sum of existing related criminal offences (human trafficking, slavery, coercion, fraud and similar) implies *de facto* prohibition of forced labour in Austria. There is no mention in the report of any jurisprudential interpretation and case law examples on forced labour.

With regard to forced labour, the Committee notes that Austrian criminal law has no provision defining forced labour as a distinct offence. Exploitation itself is not defined in law, and is not always punishable. Article 104a (3) of the Criminal Code only refers to an exhaustive list of forms of exploitation, but does not define exploitation. Exploitation of nationals, including forced labour of nationals, asylum seekers and EU posted workers is not punishable *per se* as these categories of persons are not covered by any specific act.

The Committee notes that the same concern has been raised in GRETA's Report, third evaluation round, GRETA (2020)05, 10 June 2020, par. 210: "There is no legal definition of "labour exploitation" in Austria. With a view to providing some guidance, in 2017, the Ministry of Justice reportedly announced the preparation of an internal decree providing examples of situations of labour exploitation, which is still not available". The Committee notes that Austria is not being asked to modify its legislation but to adopt measures to strengthen the labour inspectorate efficiency in fighting all forms of forced labour.

In the same vein, the Committee quotes a 2014 expert report commissioned by FRA on "Severe forms of Labour Exploitation" concluding that "according to the Austrian legal definition, labour exploitation without the elements of human trafficking or violence is no criminal offense. Thus, victims of labour exploitation, who are not trafficked or affected by violence, do not exist, legally speaking." The findings of the report remain valid as the nation legislation has not been amended since.

The Committee also refers to the ILO 2019 report "Ending forced labour by 2030" and quote "Another common weakness in national legislation is a lack of precision and clarity in terms of how forced labour is defined. The ILO Committee of Experts on the Application of Conventions and Recommendations has emphasized in this context that, "bearing in mind the principle of the strict interpretation of penal law, it is important to ensure that precise provisions are available for the investigatory authorities and the courts so that they can determine the facts easily and, where appropriate, initiate prosecutions".

The Committee asks that the next report provide information on whether the national legislation effectively criminalises all forms of labour exploitation and forced labour, and provide examples of domestic case law on forced labour. It reserves its position on this ground.

## **Prevention**

National measures against human trafficking and labour exploitation

Founded back in 2004, the Task Force on Combating Human Trafficking in Austria under the leadership of the Federal Ministry for Europe, Integration and Foreign Affairs (BMEIA) consists of member organisations including the federal ministries with related portfolios, the Laender and specialist NGOs (LEFÖ/IBF, MEN VIA, ECPAT). The Task Force's National Action Plan for 2018–2020 specifies measures for prevention, criminal prosecution, victim protection and cooperation.

In addition to previous working groups on child trafficking and prostitution, a separate working group on "human trafficking for the purpose of labour exploitation" was initiated under the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection (BMSGK) in late 2012. A major task of the group is to raise stronger awareness of the issue among the competent authorities (police, finance police, Labour Inspectorate, Agriculture and Forestry Inspections in the Austrian Laender and similar) and to promote cooperation with these authorities.

The working group on human trafficking for the purpose of labour exploitation holds between five and seven meetings each year (five were held in 2018). The meetings of the working

group are also attended regularly by representatives of the most important employer and worker organisations, who also actively participate. Human trafficking and labour exploitation is an issue that has been specifically addressed in the basic training of labour inspectors since 2018. The working group on labour exploitation has met on special occasions to specifically discuss the sectors particularly vulnerable to labour exploitation, including agriculture, construction and domestic services.

The working group has also prepared a list of indicators to help in particular inspection authorities in identifying potential victims of human trafficking for labour exploitation.

The Labour Inspectorate has included this list of indicators as a part of its internal decree on human trafficking and labour exploitation, which has been published in the Labour Inspectorate's intranet. The internal decree is a document providing instructions to all bodies and individuals involved in labour inspection for internal purposes, setting out procedures to follow in cases of suspected labour exploitation.

The decree includes:

- reference to the duty to report any reasonable suspicion to the public prosecution office, as required in Section 78 of the Code of Criminal Procedure (*Strafprozessordnung, StPO*);
- reference to the hotline for human trafficking operated by the Austrian Federal Office of Criminal Investigation (*Bundeskriminalamt, BKA*); noting that details can be informally reported to police at the first opportunity;
- reference to the legal assistance scheme set forth in Section 20 Para. 4 of the Labour Inspection Act (*Arbeitsinspektoratsgesetz, ArbIG*): in cases of human trafficking/labour exploitation; social fraud (new: Anti-Social Fraud Act, *Sozialbetrugsbekämpfungsgesetz*); wage and social dumping reported to the competent authorities;
- a list of indicators / fact sheet issued by the working group on labour exploitation;
- reference to victim protection organisations: LEFÖ/IBF, MEN VIA and UNDOK.

However, according to the 2020 GRETA's Report, (par. 212) the Ministry of Justice reportedly announced the preparation of an internal decree providing examples of situations of labour exploitation, which is still not available. According to GRETA, the mandate of labour inspectors continues to be limited to inspecting work places for the employees' health and safety issues, while the financial police monitor work contracts, social security, wage and social dumping, illegal employment of foreigners and wage tax payments. Labour inspectors are not entitled to identify cases of labour exploitation and human trafficking, (...) the limited mandate of labour inspectors hampers the identification of cases of labour exploitation.

In this regard the Committee asks that the next report provide information on measures taken to ensure that labour inspectorates have the necessary mandate to identify all cases of labour exploitation.

Private sector measures

The main measures in this area include the provisions of the Anti-Wage and Social Dumping Act (*Lohn- und Sozialdumping-Bekämpfungsgesetz, LSDB-G*, Federal Law Gazette I no. 44/2016) that require employers to pay workers equally while providing for administrative penalties where employers underpay their workers. The necessary information, for both employers and employees intending to engage in economic activity in Austria, is available on the web in seven languages at [www.postingofworkers.at](http://www.postingofworkers.at) ("posting of workers platform").

The working group on labour exploitation currently seeks to involve employers more strongly, especially in the prevention of labour exploitation in supply chains.

## **Protection of victims and access to remedies, including compensation**

In addition to penal enforcement measures, the report indicates that Austria has many measures in place to protect and rehabilitate victims of forced labour. However, the report fails to provide clear and detailed information on adopted measures.

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 asks for updated information in the next report on the number of potential victims of labour exploitation during the next reference period and the number of such persons benefiting from protection measures and support. It also asks that the next report provide general information on the type of assistance (protection from retaliation, safe accommodation, health care, material assistance, social and economic assistance, legal advice, translation and interpretation, voluntary repatriation, provision of residence permits for migrants) and to specify the period during which that support and assistance is provided.

As regards access to remedies and compensation, the Committee asks whether the existing legislative framework provides victims of forced labour and labour exploitation, including irregular migrants, with accessible and effective remedies (before criminal, civil, employment courts or other venues) to obtain compensation for all the damages related (including unpaid wages and contributions for social security benefits). It requests statistical information on the number of victims who obtained compensation and examples of the amounts awarded.

The Committee also refers to the Recommendation by the Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings (Recommendation CP/Rec (2020)03), mainly those inviting the Austrian authorities to make additional efforts to guarantee effective access to compensation for victims of human trafficking, and in particular by:

- ensuring that the collection of evidence about the harm the victim has suffered, including the financial gain from the exploitation of the victim, is part of the criminal investigations with a view to supporting compensation claims in court;
- prosecutors systematically requesting compensation and judges using all the possibilities the law offers them to uphold compensation claims;
- introducing a procedure through which victims are entitled to obtain a decision on compensation from the offender as part of the criminal trial and requiring courts to state, where applicable, why compensation is not considered;

## **Domestic work**

Section 104 of the Criminal Code prohibits exploitation of domestic work and provides that human trafficking for the purpose of domestic exploitation is considered to be exploitation of labour.

The Committee noted in its last conclusion (Conclusions 2016) that an assessment of the legal situation in Austria with regard to compliance with ILO Convention No. 189 on domestic work has shown that there are some gaps or an absence of legislative provisions relating to the recruitment of domestic employees from abroad (Article 8§1 of the Convention): payment of costs for repatriation of domestic workers to their home country following expiry or termination of the employment contract (Article 8§4 of the Convention), working hours (weekly working hours need to be reduced and the weekly rest period needs to be extended – Articles 10§§1 and 2 de la Convention), and adequate supervision of working conditions through the establishment of measures for labour inspection (Articles 17§§2 and 3 of the Convention). The 2019 report does not contain any information on the adopted and/or envisaged measures taken to address the above-mentioned lacunas and asks that the next report submit the needed information. In particular the Committee notes that with regard to the inspection of the homes of individuals who have domestic employees, the Code of Criminal Procedure authorises such house searches provided they are ordered by the public prosecutor following

a court's approval (Section 120§1 of the Code), if certain facts give rise to the assumption that a person suspected of a criminal offence is hiding there, or if evidence of such an offence may be found there (Section 119§1 of the Criminal Code) This concerns the criminal offences of slavery and human trafficking (Section 104 (a) of the Criminal Code). Aside from this, the law as it stands does not permit inspections relating to the observance of the rights of workers to be carried out in the homes of private individuals.

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, for the purposes of Article 3§3 of the Charter, inspectors must be authorised to check all workplaces, including residential premises, in all sectors of activity (Conclusions XVI-2 (2003), Czech Republic; Conclusions 2013, Statement of Interpretation on Article 3§3 (i.e. on Article 3§2 of the 1961 Charter). The Committee 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.

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

#### **“Gig economy” or “platform economy” workers**

In response to the Committee's request in the Appendix of the email of 27 May 2019 for information on measures taken to protect workers in the “gig economy” or “platform economy”, the following information is provided:

In Austria, the general framework is applied to workers in the “gig economy” or “platform economy”. In accordance with the conventional approach applied in labour law, the contractual relationships underlying crowd work are to be legally analysed in two individual steps: first, the contractual parties are to be defined; second, the contractual relationships existing between those parties are to be classified in legal terms. Where a worker is strongly controlled by the other party, resulting in personal dependence while working on tasks, the contractual relationship is to be classified as an employment contract. Differing types of contractual relationships may exist even for individuals working for one and the same platform.

The Committee asks to be informed on the status and rights of platform workers (employees or self-employed, or an intermediary category, and their rights in terms of working hours, paid holiday and minimum wage), on whether labour inspection services have any mandate to prevent exploitation and abuse in this particular sector and on any existing remedies they have access to, in particular to challenge their employment status.

In the meantime, pending receipt of the information requested in respect of all the points mentioned above (criminalisation, prevention, protection, domestic work, gig economy), the Committee reserves its position on the issue of forced labour and labour exploitation.

#### *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 Austria.

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 Austria 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 Austria 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 Austria.

The Committee refers to its previous conclusions for a description of the situation that it found to be in conformity with the Charter (see Conclusions 2016). It takes note of the information provided by the authorities in response to the requests made in its conclusions in 2016.

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

The report states that vocational education and training play a prominent part in Austria (approximately 80% of each cohort choose vocational education and training, approximately 40% of whom undergo dual training and approximately 40% attend full-time technical schools). Dual training ensures that the skills offered match the expected requirements when individuals enter the labour market after completing their initial education.

In addition, the report indicates that the skills demanded on the labour market are regularly surveyed and taken into account in vocational training programmes, in co-operation with the social partners. In particular, digitalisation, internationalisation, specialisation and flexibility are now vital qualification criteria for all vocational training.

The lifelong learning strategy developed by the Government in 2011 seeks to ensure better co-ordination of education, digital development and employment policies, with involvement of all relevant stakeholders (national and local authorities; employment offices; social partners; researchers).

### ***Measures taken to integrate migrants and refugees***

The report indicates that individuals with free access to the Austrian labour market have full access to the support programmes of the employment service and have the same rights as individuals with non-migrant backgrounds.

Various programmes and individualised support measures are aimed directly at migrants and refugees in accordance with their needs (language courses; specialised counselling; logistical support, etc.). Approximately 163 000 unemployed persons with migrant backgrounds were included in these support programmes provided by the public employment service in 2018.

The Committee notes that the number of refugees registered as job seekers or having taken part in training is increasing steadily. Measures for the recognition of foreign degrees and assessment of work experience have been introduced to foster the integration of refugees in the labour market. The authorities indicate that they are focusing their efforts on young people, in particular through apprenticeship programmes.

### *Conclusion*

The Committee concludes that the situation in Austria 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 Austria.

The Committee notes that Austria was asked to reply to the specific targeted questions 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”).

In response to the Committee’s request for information on strategies and measures in place to ensure skilling and re-skilling in the full range of competencies, needed by workers to be competitive in emerging labour markets, the report refers to the information provided under Article 10§1 of the Charter and further refers to specific strategies and measures.

From the information provided under Article 10§1, the Committee notes that placement foundations (Implacementstiftungen) seek to train jobseekers to meet companies’ needs. In addition, the report refers to the ‘AMS New Skills project’, in the context of which the Standing Committee on New Skills under the Public Employment Service (AMS) seeks to identify changes in the needs for qualifications and skills through workshops and interviews with experts from companies, representatives of training and education institutions and social partners. The results of this project are incorporated into training courses offered by the AMS to jobseekers. In particular as regards digital literacy, the report indicates that media literacy (e-literacy) and relevant skills, are taken into account in the AMS’ qualification strategy.

Furthermore, and in response to the Committee’s above question, the Committee refers to two specific initiatives. Firstly, it refers to the ‘Industry 4.0 Austria – The Platform for Smart Production”, established in 2015. Functioning within the latter platform, the ‘Qualifications and Skills’ Working group, with the participation of public authorities’ representatives, processes and proposes solutions on learning with respect to qualifications and competence requirements. Secondly, the report refers to a digital skills training programme targeting low-skilled workers in small and medium-sized companies (Fit 4 4). The Committee asks, apart from measures concerning digital literacy, what other measures are in place to ensure skilling and re-skilling of employees in new technologies, human-machine interaction and new working environments, as well as use and operation of new tools and machines.

### *Conclusion*

The Committee concludes that the situation in Austria 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 Austria.

The Committee recalls that Austria was asked to reply to the specific targeted questions 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 Committee notes from the report that subsidised, non-profit social enterprises offer people outside the labour market and the long-term unemployed temporary jobs that are paid in accordance with the applicable collective agreement. These enterprises provide transitional jobs for the long-term unemployed with the aim of helping them to find permanent employment in the labour market. While employed by the socio-economic enterprise, the "transit workers" are supported by qualified staff who help them develop professional skills, solve problems in their personal environment and find permanent employment. In 2018, some 27,200 people were employed in a job in a socio-economic enterprise or engaged in non-profit employment project.

The Committee notes from the report that the programme *Ausbildungsgarantie bis 25*, in force since 1 January 2017, guarantees training for persons up to the age of 25 years, pursuant to Article 38a of the Public Employment Service Act (*Arbeitsmarktservicegesetz, AMSG*). This programme of the Public Employment Service (AMS) for young adults puts particular emphasis on education and training as a means of long-term integration into the labour market. The training guarantee is applicable to young adults aged between 19 and 24 that are registered as unemployed and have no qualifications beyond compulsory schooling (approximately 43% of the unemployed in this age group).

The programme *Ausbildungsgarantie bis 25* offers skills training measures, such as the intensive training in preparation for final apprenticeship examinations, the apprenticeship training above company level, labour foundations or job-related skills training measures.

The Committee notes from the report that this programme, which has a budget of €37 million, has provided around 17,800 young people with an additional education perspective in 2018.

According to EUROSTAT, the unemployment rate of the population aged 15-24 in Austria was 9.4% in 2018. The Committee asks the next report to provide statistics on the long term unemployed.

The Committee asked in its previous conclusion (Conclusions 2016) whether equal treatment with respect to access to training and retraining for long-term unemployed persons is guaranteed to nationals of other States Parties lawfully resident in Austria on the basis of the conditions mentioned under Article 10§1.

In response, the report states that migrants and third-country nationals with the right to move freely in the Austrian labour market can make use of all AMS support services and programmes. All of them, including the long-term unemployed, have the same rights as persons without a migration background throughout the consultation process.

### *Conclusion*

The Committee concludes that the situation in Austria 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 Austria.

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 concluded that the situation in Austria was not in conformity with Article 10§5 of the Charter on the ground that non-EEA nationals are subject to a length of residence requirement of five years to be eligible for financial assistance for training.

It notes from the report that financial support for education is governed by two different statutes in Austria, namely by the Austrian Schools Grants Act of 1983 and by the Austrian Student Support Act of 1992.

The report indicates that according to Section 1a no. 3 of the School Grants Act of 1983 (*Schülerbeihilfengesetz, SchBG*) as amended, persons who are non-EU or non-EEA nationals are eligible for financial assistance provided that at least one parent has been liable to pay income taxes in Austria for at least five years and has had the centre of his or her interests in Austria during that time.

The report confirms that there has been no change to the situation.

As regards the financial support for students which is provided for by the Austrian Student Support Act of 1992, the report indicates that the legal situation of foreign students was changed in 2015 to include a requirement of equal treatment of EU/EEA citizens. For third-country nationals, the legal situation has not changed. In line with Council Directive 2003/109/EC, they only enjoy equal treatment if they have obtained the right of permanent residence after having legally resided in Austria for at least five years.

The Committee notes from the report that an amendment to the requirements for the equal treatment of stateless persons is being prepared. Stateless persons shall enjoy equal treatment with third country nationals. Apart from this, no changes to the regulations on equal treatment are currently planned in Austria.

### *Conclusion*

The Committee concludes that the situation in Austria is not in conformity with Article 10§5 of the Charter on the ground that equal treatment of nationals of other States Parties residing or working lawfully in Austria was not guaranteed with regard to fees and to financial assistance for training.

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

### *Paragraph 1 - Vocational training for persons with disabilities*

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

The Committee previously concluded that the situation in Austria was not in conformity with Article 15§1 of the Charter on the ground that the right of persons with disabilities to mainstream education was not effectively guaranteed (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 Committee recalls from previous conclusions that the principle of integrated education is enshrined in legislation (Conclusions 2016). The report states that the current wave of education reforms involves steps to ensure that all pupils are educated together.

In order to ensure that students with physical disabilities or sensory impairments have continued access to education at the intermediate and upper vocational schools and the upper level of secondary academic schools (*Oberstufe*), special statutory provisions are in place that provide for modifications of the curriculum to be made for the respective school types, as well as more support in lessons for these students.

As regards upper secondary education, the principle of integration of pupils in need of special support in pre-vocational schools and in one-year technical schools (*Polytechnische Schulen*) for economic professions was enshrined in law in 2012 (Federal Gazette I no. 9/2012).

The report states that the Education Reform Act (*Bildungsreformgesetz*) 2017 combined the interdisciplinary expertise for support measures available in the school system within the Boards of Education (established as joint authorities at Federal and Länder level) into one section for inclusion, diversity and special education referred to as *Fachbereich Inklusion / Diversität / Sonderpädagogik (FIDS)*. The task of this section is to coordinate and provide all grants and to provide support to teaching staff.

The Committee recalls that the Federal Disability Equal Treatment Act (*Bundesbehindertengleichstellungsgesetz*, BGStG) applies to all areas of federal administration, thus also covering most areas of school education (Conclusions 2016).

As regards the definition of disability the Committee notes from the second alternative report on the implementation of the UN Convention on the Rights of persons with Disabilities by the Austrian Disability Council that Children with disabilities receive special educational support if they are granted special educational needs (SEN) status. The SEN assessment is still based on the medical model of disability – in terms of only focusing on the person’s impairment.

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 World Health Organisation 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 concluded that the situation in Austria was not in conformity with Article 15§1 of the Charter on the ground that the right of persons with disabilities to mainstream education was not effectively guaranteed (Conclusions 2016).

According to the report a child’s need for special pedagogical support is determined by an administrative decision of the Board of Education drawing on the opinions of experts in special pedagogical needs. Pupils who have received an administrative decision indicating that they are in need of special support (*Sonderpädagogischer Förderbedarf Bescheid, SPF Bescheid*) can either be taught in schools catering for special needs or integrated into other schools.

According to the data in the report in the academic year 2017/2018 there were 567,544 children in education (general compulsory schools) 30,364 children needed special pedagogical support, (5.3% of children) and of these 19,685 were in inclusive education. 64% of children with special pedagogical needs were in inclusive education in general schools and 36% in education in special schools.

According to data provided in the European Agency Statistics on Inclusive Education (EASIE) 2018 Dataset Cross-Country Report, in primary and lower secondary schools (providing compulsory education), 3.34% of children were recognised as having SENs; of these 68,74.% attended mainstream schools and 31, 26% attended special schools. The Committee notes the positive trend in this respect.

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.

The Committee notes from the second alternative report on the implementation of the UN Convention on the Rights of Persons with Disabilities by the Austrian Disability Council that although many children with disabilities receive education in inclusive settings due to insufficient resources it is often inadequate. The Committee asks for the Government's comments on this.

The Committee notes that the Service Department of the Ministry of Social Affairs grants an allowance for educational and vocational training to compensate for the additional expenditure caused by a disability. The amount of such allowance is in principle based on the actual additional expenditure caused by a disability. This special allowance is granted in addition to other allowances (such as school allowance or study allowance).

***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 (Mental Disability Advocacy centre (MDAC) v. Belgium Complaint No.109/2014, Decision on the admissibility and merits 16 October 2017, International Federation for Inclusive Education (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.

The Committee notes the implementation of Model Inclusive Regions, established under the National Disability Action Plan to implement Article 24 of the UN Committee on the Rights of persons of disabilities. An Inclusive Model Region should enable all pupils living in this region to be taught at mainstream schools, thereby abolishing separate schools/groups. Facilities (e.g. for pupils with severe/multiple disabilities or with serious socio-emotional development disorders) must be created at (regular) schools.

Legally binding guidelines for the development of Inclusive Model Regions (*Verbindliche Richtlinie zur Entwicklung von Inklusiven Modellregionen*), was drawn up by the Federal Ministry of Education, Science and Research in 2015, defining the pedagogical, legal and organisational framework needed to develop Inclusive Model Regions and serving as a guide for the Länder.

The Länder of Carinthia, Styria and Tyrol began setting up Inclusive Model Regions during the first implementation phase starting in the 2015/16 school year. The "Inclusive Model Region" concept is also part of the Styrian Action Plan to implement the UN Convention on the Rights of Persons with Disabilities.

From 2020 onwards, high-quality special pedagogical support will be offered at every regular school and specialised facilities and separate schools/groups will be phased out.

The Committee asks the next report to provide information on the progress made in this respect in all regions.

The Federal Institute for Education Research, Innovation & Development (BIFIE) has been tasked with scientifically monitoring the implementation of Inclusive Model Regions by means of ongoing evaluation.

"Guidelines governing the implementation and monitoring of quality standards in the inclusive education of pupils with disabilities" were sent to the school authorities by means of Circular no. 17/2015. This Circular contains binding guidelines for quality standards for teaching in inclusive settings.

The Committee notes from the Monitoring Report to the UN Committee on the Rights of People with Disabilities on the Occasion of the Second Constructive Dialogue with Austria by the independent monitoring mechanism that the Education Reform Act of 2017 contains – in contrast to the progressive draft – extremely problematic regulations which reinforce the prioritisation of special schools as "a first choice" again (article 19 § 8 Par. 1), which had been abolished previously. Furthermore in some provinces new special schools were created instead of making the connected investments in inclusive settings. The Committee asks for the Government's comment's on this.

As regards resources, according to the report in the 2018/19 academic year, a total of around 404 million euros was made available by the Federal Government for 28,725 pupils in need of special support. In addition, the Federal Government also reimburses a total of 25 million euros every year throughout Austria for the additional costs incurred by the *Länder*, inter alia, teaching for children with special educational needs. The Committee asks to be informed of the trends in the spending to support inclusive education.

Additional teaching resources are made available to provide pedagogical support to help integrate pupils with disabilities in academic secondary schools (*AHS*), as well as in intermediate and higher-level vocational schools (*BMHS*). In the 2018/19 academic year, this translates into an additional 1,356 hours per week, corresponding to a budget of around € 5,200,000 . These resources were disbursed for 522 pupils.

Expenditure for personal assistance services for pupils with physical disabilities amounted to around € 1,609,000 in 2016, around € 1,775,000 in 2017 and around € 2,206,000 in 2018 (provisional).

The Committee previously asked (Conclusions 2016) what the success rate was in progressing to vocational training or higher education or to the open labour market and if qualifications obtained on leaving school are identical for all children and recognised when it comes to entering higher or vocational education or the open labour market. The report states that this information cannot be provided. The Committee stresses the importance of collecting data on these issues.

### ***Remedies***

The Committee takes note of the information provided in the report on case law and complaints filed with the relevant authorities in relation to discrimination on the ground of disability and the lack of reasonable accommodation in the education and training spheres. The Committee asks the next report to provide updated information on the remedies available in the case of discrimination on the ground of disability with respect to education (including access to education, including the provision of adequate assistance or reasonable accommodation) and the relevant case-law.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Austria 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 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 Austria.

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 deferred its conclusion (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.

The Committee refers to its previous conclusions for a description of the legal framework.

The Committee notes the information provided in the report on the number of arbitration proceedings alleging discrimination under the Federal Disability Equal Treatment Act; 1,400 between 2006 and 2018.

The report confirms that legislation prohibiting discrimination exists in all *Länder*.

### **Consultation**

In response to the Committees request for information on the consultation of persons with disabilities the report provides examples of the consultation and participation of person with disabilities, participation in the work to reform guardianship in the working groups to develop an improved German translation of the UN Convention of the Rights of Persons with Disabilities and on the portrayal of people with disabilities in the media, including by organisations representing people with disabilities and self-advocates, in line with the guidelines for the participation of citizens in political decision-making processes.

The preparation and implementation of the National Action Plan (NAP) on Disability 2012-2020 also involved the participation of people with disabilities. A monitoring group for the NAP on Disability initiative was established in 2012, comprising organisations for people with disabilities, self-advocates, scientists, social partners, all Austrian *Länder* and all Federal ministries.

The Austrian Disability Council (ÖBR), the umbrella organisation of the Austrian disability associations, is involved in all reviews concerning the interests of people with disabilities.

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

#### **Financial and personal assistance**

The Committee previously asked the next report to provide details of benefits and other forms of financial assistance available to persons with disabilities (Conclusions 2016). The report states that people with disabilities and their families may seek funding for example for housing, technical aids and transport (see below) from the Support Fund for People with Disabilities (*Unterstützungsfonds für Menschen mit Behinderung*).

The report further provides information on long-term care benefit which is intended to provide general compensation for the additional costs of requiring care, enabling the recipient to lead a more autonomous life. The amount of long-term care benefit under the Federal Long-Term Care Benefit Act (*Bundespflegegeldgesetz, BPGG*) is determined solely by the actual need for care and assistance in the individual case. Long-term care benefits are granted irrespective of income and assets and of the age of the person concerned. There is a legal entitlement to long-term care benefits if the conditions for receipt are fulfilled.

The long-term care benefit is paid at seven levels, depending on the number of hours care is required. The Committee notes that some levels appear to be low. For example, for persons who need care for more than 65 hours but less than 95 receive a monthly benefit of 157.30 Euros. The Committee asks for the Government comments on this.

In February 2019, a total of 461,468 persons were entitled to receive long-term care benefits, 170,005 of whom were men and 291,463 women.

As regards the supervision of carers the report states that in order to ensure the quality of home-based long-term care, free and voluntary home visits to recipients of long-term care benefits being cared for in their home have been carried out throughout Austria since 2001 on behalf of the Ministry of Social Affairs. Additionally, mandatory home visits are carried out in respect of those receiving for 24-hour care. Further a nationwide quality standard for employment agencies providing 24-hour care has been created.

The Committee notes the information provided in the report on support available to family members providing care and assistance to a family member with disabilities.

The Committee notes from other sources (Academic Network of European Disability Experts (ANED)- country report on Austria 2018-2019, Living independently and being included in the community) that personal assistance for living an independent life is regulated by the *Länder* and often there are many requirements for eligibility which are difficult to fulfil. Furthermore, according to ANED persons with disabilities have no legal claim (*Rechtsanspruch*) to personal assistance. The Committee asks for the Government's comments on this.

The Committee asks the next report to provide information on personal assistance; whether all Länder provide for personal assistance for independent living, the number of beneficiaries, and the budget allocated.

It also asks whether funding for personal assistance is granted on the basis of 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**

The Committee previously requested information on technical aids (Conclusions 2016). The report states that persons with disabilities may receive assistance to acquire aids to improve mobility such as electric wheelchairs and communication aids.

The costs of technical work-related aids may be covered in full are directly related to the work being performed.

Any costs for acquiring an assistance dog are covered, if this is needed to improve mobility and pursue gainful employment; costs for therapy dogs are not covered. The amount of funding provided is limited to a maximum of € 30,000 for guide dogs and € 10,000 for service and hearing dogs.

The Committee asks the next report to provide updated information on whether the state also contributes to the costs of technical aids not related to employment. It reiterates its previous question whether persons with disabilities are entitled to technical aids free of charge or must contribute themselves to the cost. If an individual contribution is required, the Committee asks whether the state provides some financial contribution

### **Housing**

The Committee previously asked for information in the next report on grants available to individual people with disabilities for home renovation work and the removal of barriers to mobility, the number of beneficiaries of such grants and the general progress made on improving access to housing (Conclusions 2016)

According to the report people with disabilities can receive financial support from the Support Fund for People with Disabilities in Social Hardship under Section 24 of the Federal Disability Act, in accordance with the guidelines issued by the Minister of Social Affairs, for extensions to and conversions of apartments or houses. Such grants are means tested. The Committee asks how many persons receive assistance annually on average.

The Committee notes from other sources (ANED- country report on Austria 2018-2019 Living independently and being included in the community) that no effective or systematic measures have been taken to reduce the number of institutionalised persons in Austria, that there is no planned and systematic approach for the independent living of persons with disabilities, neither at the Federal level nor at the level of the Lander. The Committee asks for the Government comments on this.

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

The Committee asks how many persons with disabilities live independently with support and how many live institutions and small group homes.

### **Mobility and transport**

The Committee previously asked how the accessibility of public road, rail and air transport is guaranteed, particularly in the *Länder*. It also asked whether persons with disabilities are entitled to free transport, or concessionary fares to cover any supplementary costs (Conclusions 2016).

The report states that People with disabilities who hold a Disability Pass with a recognised level of disability of at least 70% can be offered discounts on fares.

People with disabilities can also apply for a Disability Pass, which may for example, state that it is unreasonable to expect the holder to use public transport. This may result in

- entitlement to receive a free annual motorway toll sticker from the Service Centre of the Ministry of Social Affairs;
- exemption from engine-size-related insurance tax; or
- being given an identity card in accordance with Section 29b of the Road Traffic Act 1960, which exempts the card holders from generally applicable parking regulations.
- A grant may be obtained for acquiring a driving licence, where this is needed to ensure integration into the working world, amounting to 50 percent of the costs incurred.
- A grant may be obtained to purchase of a motor vehicle, where the motor vehicle is needed to ensure integration into the working world.

The mobility grant is lump-sum amount provided to help with the additional costs caused by the disability and is paid once a year. In 2019 the mobility grant was €580. the Committee asks for further information on the conditions for receipt of the mobility grant.

The Committee notes the information on the progress of the implementation of the NAP on Disability 2012-2020 as it relates the accessibility of transport.

The Committee asks whether all public transport is accessible to persons with disabilities.

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.

### **Communication**

The Committee previously asked what was done to encourage access to new communication technologies on the part of persons with disabilities (Conclusions 2016).

The report states that an Austrian Web Accessibility Act was adopted in 2019 (outside the reference period). It lays down standards relating to the accessibility of websites and mobile applications of public sector bodies, thereby making websites and mobile applications better accessible to users, in particular to persons with disabilities, for example it provides that there should be a text for images, or that websites can be browsed without a mouse, which can be difficult to use for some people with disabilities.

It is also possible to obtain financial support from the Support Fund for People with Disabilities in Social Hardship in accordance with Section 24 of the Federal Disability Act to acquire communication aids.

The NAP on Disability 2012-2020 sets out five measures under “Information Society” in its “Accessibility” chapter, four of which had already been fully implemented, and one partially, as of the end of 2017. The measures that have been fully implemented are:

- The “Austrian electronic network” funding programme in the field of digital integration supports the market launch of electronic networks and services which promote independent living and the involvement of all sectors of the population in the information society;
- An additional allowance for telephone charges and the cost of an internet connection for older persons and persons with a disability on a low income;
- The analysis of new technological developments, with special emphasis on their use for people with disabilities;
- An assessment of measures needed for the adoption of an ordinance on accessible telecommunications services with the involvement of people with disabilities.



The NAP on Disability also includes a subchapter on sign language. The following measures were partially implemented:

- An examination of legislation relating to the distribution of costs for Austrian sign language interpretation and, if necessary, the amendment of legislation;
- Training courses for sign language interpreters;
- The promotion of competence in sign language in the general population.

### ***Culture and leisure***

The Committee asks the next report to provide updated information on measures taken to ensure access of persons with disabilities to culture and leisure activities including sporting activities.

#### *Conclusion*

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

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

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

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

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

The Committee 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 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 Austria.

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 conclusion (Conclusions 2016), the Committee noted that equal pay for equal work or work of equal value is guaranteed by Article 3 of the Federal Equal Treatment Act (for the private sector) and by Article 4 of the Federal Equal Treatment Act.

The Committee considers 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 noted in its previous conclusion that any person who considers himself or herself to be a victim of discrimination may apply to the courts pursuant to the provisions of the Equal Treatment Act. Where it is established that there has been a violation of the principle of equal treatment, the victim may obtain compensation in the form of: (1) compensation for financial loss, i.e. actual harm caused (*positiver Schaden*) and loss of profits, or (2) restoring a discrimination-free situation, together with, in both cases, (3) compensation for non-material damage and the personal impairment suffered.

The report states that where it is established that there has been a violation of the principle of equal pay for equal work or work of equal value under Section 12§2 of the Equal Treatment

Act, the victim has the right to claim payment of the income differential and compensation for the personal injury suffered. The report states that there is no upper limit on the compensation that may be awarded. The Committee asks whether the obligation to compensate the difference of pay is limited in time or is awarded for entire period of unequal pay.

The Committee notes the information in the report on the case-law of the labour and social courts and of the Equal Treatment Commission for the private sector on wage discrimination cases considered during the reporting period.

With regard to the *burden of proof*, the Committee notes that, in proceedings before the Equal Treatment Commission and the courts, it is for the complainants to establish the facts giving rise to a presumption that they have been discriminated against on the basis of their gender. They must present credible reasons to show that they have been discriminated against. Pursuant to Section 12§12 of the Equal Treatment Act, the alleged discriminator must prove that there are good reasons to believe that there has been no discrimination. The Committee asks how the principle of shifting of the burden of proof is applied in practice, for example, if it is systematically applied in the cases related to pay discrimination.

The report points out that, pursuant to Section 13 of the Equal Treatment Act, the fight against discrimination has been further strengthened by the introduction of a measure to protect against any adverse treatment or consequences constituting directly or indirectly a reaction to a complaint or legal action seeking to enforce compliance with the principle of equal treatment. This protection covers not only the person bringing the complaint but also all those, employees or witnesses, who support him or her (see also Conclusions 2016 on Article 20).

The Committee asks for the next report to include information on sanctions applied to employers where there has been gender pay discrimination in employment.

In the light of the above, 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.*).

In this connection, the Committee notes that, pursuant to the provisions of the 2013-2018 Government Programme, in 2015 an evaluation was carried out of the obligation under the Equal Treatment Act to indicate the minimum wage in job vacancies and to produce reports on remuneration (for undertakings with more than 150 employees, see Conclusions 2016 on Article 20). The evaluation, published in 2016, focused on the implementation of the relevant legal provisions of the Equal Treatment Act and the effect of these tools on the planned

improvement of pay transparency. After consultation with employees, works councils and employers, it reached the following conclusions:

- The level of implementation of the legal requirements is high. The minimum legal standards serve as guiding principles.
- The inclusion of starting salaries in job vacancies improves transparency on pay differentials across different industries and within companies.
- Income reports are rarely used as a basis for further structural measures to tackle the gender pay gap within companies.
- Works council members are rarely involved in the drafting of income reports and related discussions. Confidentiality requirements hamper internal exchanges.
- Both tools, and in particular income reports, are not widely known amongst employees. There is room for improvement in both instruments in order to increase their impact on pay transparency.

The Committee notes that, following the publication of this evaluation, various measures have been taken to reduce the structural factors contributing to the pay gap, such as training courses to promote women's access to non-traditional occupations and to improve their skills; special assistance for women returning to work after a career break for family reasons; "career centres" for women to provide personalised advice; information campaigns to encourage men to take paternity and family leave; training for works council members on "Equal pay for equal work and work of equal value" in evening courses organised by the trade unions, etc. The Committee notes, however, that some of these measures had already been implemented in the previous reference period.

The Committee notes from the national report on gender equality in Austria drawn up by the European Network of Legal Experts in the Field of Gender Equality and Non-Discrimination (2018) that, although income reports are confidential, complainants may use them as supporting evidence in court cases concerning equal pay to substantiate *prima facie* evidence of pay discrimination.

The report indicates that, on the basis of this evaluation, a project entitled "Fair Pay" has been implemented to raise awareness of pay equity and pay transparency in companies. A toolbox has been developed to draw up, analyse and make use of income reports. As there is no conditional obligation for companies that are required to provide income reports to publish them, the Committee asks to whom this toolkit is addressed.

The report also indicates that with effect from autumn 2018, the Minister for Women's Affairs has invited experts from the world of research and administration and the social partners to take part in three round tables on income transparency. The discussions focused on indicators to measure pay gaps, further efforts to increase income transparency, international best practices and non-discriminatory job evaluation schemes. The report indicates that this initiative will be continued.

In addition, the report states that an online salary calculator has been available since 2011. This tool is updated regularly and can be used to calculate average guidance values for women's and men's wages and salaries by sector of activity or occupational group. It takes into account education, work experience and type of work.

The Committee refers to its previous conclusion (Conclusions 2014 on Article 4§3) in which it noted that pay and employment conditions in Austria were generally governed by industry-specific collective agreements. Since the criterion of equal pay also applied to collective agreements, the rules on the remuneration of employees, which applied not only at corporate or trans-corporate level, but also to the entire industry, formed the basis of the employment relationship and the principle of equal pay for equal work or work of equal value had to be complied with when assessing jobs (Conclusions 2014 on Article 4§3). The report adds that, under the 2017-2018 work programme, the Federal Government in co-operation with the social partners had provided for the gradual introduction of a minimum wage of at least €1,500

to be written into collective agreements for areas where the lowest minimum wage was below that level. This measure is to be implemented in all sectors by 2020.

The Committee asks for the next report to provide information on the parameters making it possible to establish the equal value of the work carried out (such as the nature of the work, training and working conditions).

### ***Enforcement***

The Committee requests that the next report provide 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.*).

The report states that the gender pay gap in the private sector (unadjusted and expressed as mean gross annual income) was 37.3% in 2017 (compared with 39.1% in 2013); in other words, women earned on average 37.3% less than men in that year (median annual earnings for men were €33,776 and for women €21,178 in 2017). This difference is largely explained by the extremely high – and growing – percentage of women working part-time (48.3% of women compared with 10.3% of men in 2018; 45.9% of women and 8.5% of men in 2013). The Committee notes that, according to the report, the wage gap has decreased by 2.4% since 2010.

In the federal public service, women's average earnings are lower than men's, although the difference is much smaller than in the private sector. The wage gap adjusted for the number of working hours and jobs lasting up to one year was 12.5% in 2014 and 11% in 2017. This contrasts with the 20.1% obtained by comparing the hourly earnings of full-time and part-time employees in Austria, or the 15.9% difference in earnings received by women and men employed full-time year-round.

The Committee notes from Eurostat data that the gender pay gap was 21.8% in 2015, 20.8% in 2016, 20.7% in 2017 and 20.4% in 2018 (compared with 25.1% in 2008). It finds that this gap was higher than the average of the 28 European Union countries, i.e. 15% in 2018 (data as of 29 October 2020).

The Committee considers that the Government has produced useful statistics, put in place a series of measures and made available the financial means to achieve the goal of reducing the wage gap between women and men. These measures have taken into account the findings of the 2015 evaluation that was carried out to assess the requirements contained in the Equal Treatment Act. The Committee notes that the wage gap has decreased by 2.4% since 2010 (according to the report) and is steadily decreasing, albeit at a very slow pace. However, in relative terms, it is high as it is above the EU average. In the light of the above, the Committee considers 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 Austria 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.

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

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.

