



European  
Social  
Charter

Charte  
sociale  
européenne



Mars 2021

## **CHARTE SOCIALE EUROPÉENNE**

European Committee of Social Rights

Conclusions 2020

**CYPRUS**

*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 Cyprus, which ratified the Revised European Social Charter on 27 September 2000. The deadline for submitting the 14<sup>th</sup> report was 31 December 2019 and Cyprus submitted it on 21 January 2020.

The Committee recalls that Cyprus 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 2012).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2012) 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).

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

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

The conclusions relating to Cyprus concern 13 situations and are as follows:

– 8 conclusions of non-conformity: Articles 1§2, 1§3, 10§1, 10§5, 15§2, 15§3, 20 and 24.

In respect of the other 5 situations related to Articles 1§1, 1§4, 10§3, 10§4 and 15§1, 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 Cyprus under the Revised Charter.

The next report from Cyprus 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 Cyprus.

### ***Employment situation***

According to Eurostat, the GDP growth rate increased from 3.2% in 2015 to 5.2% in 2018, a considerably higher rate 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 62.7% in 2015 to 68.6% in 2018, which is equal to the EU 28 average in 2018.

The employment rate for men increased from 66.7% in 2015 to 73.3% in 2018, which is close to yet still slightly lower than the EU 28 average (73.8% in 2018). The employment rate for women rose from 59% in 2015 to 64.2% in 2018, exceeding the EU 28 average (63.3% in 2018). The employment rate for older workers (55 to 64-year-olds) increased from 48.5% in 2015 to 60.9% in 2018, a rate that is above the EU 28 average (58.7% in 2018). Youth employment (15 to 24-year-olds) increased from 25.5% in 2015 to 31.3% in 2018, which is below the EU 28 average (35.3% in 2018).

Again according to Eurostat, overall unemployment (persons aged 15 to 64 years) decreased considerably, from 15.2% in 2015 to 8.6% in 2018, which is still higher than the EU 28 average (7% in 2018).

The unemployment rate for men decreased from 15.4% in 2015 to 8.3% in 2018, which is higher than the EU 28 average (6.7% in 2018). The unemployment rate for women decreased from 14.9% in 2015 to 8.8% in 2018, which is higher than the EU 28 average (7.2% in 2018). Youth unemployment (15 to 24-year-olds) decreased from 32.8% in 2015 to 20.2% in 2018, which is higher than 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) decreased from 45.6% in 2015 to 31.6% in 2018, which is considerably 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) fell from 15.3% in 2015 to 13.2% in 2018 (as a percentage of the 15 to 24-year-old age group), a rate which is higher than the EU 28 average (10.5% in 2018).

The Committee notes the positive trend in the economic situation during the reference period, which went hand in hand with favourable developments in the labour market (an increase in the employment rates and a sharp drop in unemployment). However, unemployment rates are still high (generally higher than the EU 28 average), particularly among young people.

### ***Employment policy***

In its report, the Government lists the measures taken to promote employment. They include the modernisation and consolidation of the public employment services (upgrade of the computer systems, training courses for all staff, recruitment of 30 additional employment counsellors in June 2018 for a period of two years, development of new approaches in services provided to employers); incentives to employ jobseekers under the age of 25 and over 50, persons with chronic diseases or disabilities and recipients of the guaranteed minimum income; services providing information on training and employment, career guidance and placements, including personalised services, especially for vulnerable groups (recipients of guaranteed minimum income, young people and long-term unemployed persons); and the creation of a new electronic platform for employers.

Furthermore, under the Youth Guarantee scheme, the Cypriot authorities have received technical support from the EU to carry out activities designed to attract young people, particularly young NEETs, to participate in labour market integration services and get them active again. In this context, a national information and awareness-raising programme has been launched on the available employment programmes and services; technical committees have also been set up in all the regions to promote information pooling, partnerships and synergies.

According to European Commission data, public expenditure on labour market policies (as a percentage of GDP) decreased from 0.95% in 2015 to 0.74% in 2016 and 0.6% in 2017 (of which 0.12%, 0.11% and 0.09% respectively was for active measures). The Committee considers these percentages to be very low, especially given the fact that unemployment is still relatively high.

The Committee notes that the report again provides very little information on the matters to be examined under Article 1§1. The report fails in particular to provide information on: a) active employment measures for jobseekers in general and those specifically designed to support groups with distinct levels of under-employment or unemployment (such as young people, young NEETs, migrants and refugees); b) the number of people participating in various active measures (training); and c) the overall activation rate (i.e. the average number of participants in active measures as a percentage of the total number of unemployed).

The Committee recalls that in order to assess the effectiveness of employment policies it requires the above information. It therefore reiterates its request that the next report provide this information. The Committee points out that if such information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 1§1 of the Charter. In the meantime, the Committee reserves its position.

The Committee also recalls that labour market measures should be targeted, effective and regularly monitored. It reiterates its request that the next report provide information on whether the employment policies in place are monitored and how their effectiveness is assessed.

### *Conclusion*

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

## **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 Cyprus.

### **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 the replies to any findings of non-conformity or deferrals in its previous conclusion.

The Committee recalls that Cyprus has accepted Article 15§2 and 20 of the Charter. For aspects concerning discrimination in employment on grounds of disability and gender, the Committee thus refers to its Conclusions on these provisions.

As regards the legislation prohibiting discrimination in general terms, the report indicates that the principle of equal treatment is enshrined in the Constitution for every person. It further states that Law No. 58(I)/2004 on Equal Treatment in Employment and Occupation provides a general framework for combating discrimination on grounds of religion or belief, age or sexual orientation as regards employment and occupation.

The report does not reply to the Committee's request for information on legislation targeted at combating discrimination on grounds of race and ethnic origin. The Committee again asks that the next report provide a comprehensive description of how discrimination on grounds of race, ethnic origin, sexual orientation, religion, age, and political opinion is prevented and combated by the legislation. It also asks information on any measures taken to implement the relevant legislation.

With regard to discrimination on grounds of sexual orientation, the Committee notes from another source that while section 6(1) of the Equal Treatment in Employment and Occupation Law No. 58(1)/2004 prohibits direct and indirect discrimination in employment on the ground of sexual orientation, according to the European Commission against Racism and Intolerance's (ECRI) report published on 7 June 2016, discrimination against lesbian, gay, bisexual and transgender (LGBT) persons in the field of employment remains a widespread problem (ECRI Report on Cyprus, fifth monitoring cycle, CRI(2016)18, paragraph 115). The same concern was also raised by the ILO Committee of Experts on the Application of Conventions and Recommendations (see ILO CEACR, Direct Request, (CEACR) – adopted in 2019, published at the 109th ILC session (2020), [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\) – Cyprus \(Ratification: 1968\)](#)). The Committee asks for information on the implementation of the legislation and on any measures taken to *combat/eliminate discrimination in employment on grounds of sexual orientation and facilitate the integration of LGBT workers into the labour market*.

As regards discrimination on grounds of race and ethnic origin, the Committee notes that the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities (CoE-ACFC) found that the continued fixation on classifying citizens into either Greek Cypriots or Turkish Cypriots in all spheres of life, even when not strictly called for by the Constitution, contradicted the existing diversity in the Cypriot society and, moreover, appeared to create practical difficulties. The same Advisory Committee expressed concerns that Roma (generally considered as Turkish Cypriots) remain socially and economically

marginalised and few efforts have been made to engage directly with representatives in order to promote their equality and access to rights in a more comprehensive manner (Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Cyprus, 18 March 2015, paragraphs 3, 4 and 13). The Committee asks for information on the concrete measures taken to combat discrimination on grounds of race and ethnic origin and ensure equal access to the employment of all national minorities/groups such as Turkish Cypriots and Roma.

As regards measures taken to counteract discrimination in the employment of migrants and refugees, the report indicates that in the context of protecting the rights of migrant workers employed in Cyprus, eliminating labour exploitation in general and promoting a safe and secure working environment for all migrants, the Ministry of Labour and Social Insurance has established a procedure for the effective and efficient examination of migrant workers' complaints regarding violations of terms of employment. This procedure ensures a fast out-of-court complaint resolution for victims of labour exploitation as it is imperative for safeguarding the working conditions of women migrants and foreign workers as well as those working in precarious employment. The Committee asks for information in the next report on the implementation/outcomes of this procedure and data on any complaints related to discrimination of migrants in the context of employment. The Committee reiterates its request for information on the concrete measures taken to counteract any discrimination in employment of refugees.

The Committee further 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, able to provide reinstatement and compensation, as well as adequate penalties effectively enforced by labour inspection; furthermore, an appropriate adjustment of the burden of proof which should not rest entirely on the complainant, as well as the setting-up of a special, independent body to promote equal treatment. The Committee explicitly requested information on remedies for this examination cycle.

The report does not provide any information on the above-mentioned aspects. The Committee reiterates its request for detailed information in the next report on remedies available to victims of discrimination, including any judicial or administrative procedures available in cases of an allegation of discrimination in employment, the possibility of reinstatement and compensation for the victim (the minimum/maximum amount of compensation), any sanctions/penalties enforced against the employers (the minimum/maximum amount of fines). The Committee also asks for information on the remedies available for victims in case of discriminatory termination of employment.

As regards the burden of proof in cases of alleged discrimination in employment, no information is provided in the report. The Committee asks whether legislation requires a shift of the burden of proof from the complainant to the respondent in judicial/extra-judicial proceedings and what is the practice of the courts/equality bodies/Ombudsman in this sense.

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 victims of discrimination (to cover the material and immaterial damage suffered).

With regard to equality bodies, the report indicates that the Commissioner for Administration and Protection of Human Rights has been designated both as the monitoring authority for equal treatment in employment and occupation and as the one for combating racism, with jurisdiction both in the public and the private sectors.

The Committee notes from the 2019 Country Report on non-discrimination of the European Equality Law Network that in April 2017 a new Ombudsman was appointed who has ceased all equality body's activity, even though the institution's mandate was not officially changed.

The same report indicates that the set-up of the office has changed to the effect that there is no longer a separate authority to examine complaints dealing with discrimination; instead, all the complaints submitted are examined in the institution's capacity as Ombudsman, and the Equality Body is now essentially defunct. The Committee asks that the next report provide information on the activity/mandate of the new Ombudsman/body with regard to dealing with cases of alleged discrimination in employment and measures that can be imposed and the remedies for victims.

The Committee reiterates its request that all relevant data on the existence and functioning of remedies in cases of alleged discrimination in employment be included in the next report. It considers that if the requested information is not provided, nothing will allow to establish that the situation is in conformity with Article 1§2 of the Charter on this point.

The Committee concluded previously that the situation in Cyprus was not in conformity with Article 1§2 of the Charter on the ground that nationals of States Parties legally residing in Cyprus can only be employed if no Cypriot is available and willing to fill the particular vacancy, which constitutes direct discrimination based on nationality (Conclusions 2008 and 2004). In its previous conclusion (Conclusions 2012), the Committee did not examine this particular issue in the case of Cyprus.

As regards discrimination in employment on grounds of nationality, the Committee recalls that under Article 1§2 of the Charter, while states may require the possession of a work permit before providing foreign nationals with access to employment on their territory, they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G; restrictions on the rights guaranteed by the Charter are admitted only if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority (Conclusions 2012, Albania).

Since the report does not provide the necessary information on this point, the Committee asks whether the situation previously found not to be in conformity has changed/evolved and if so, what categories of jobs are closed to non-nationals, namely nationals of State Parties to the Charter, especially other than the EU citizens.

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

## **2. Forced labour and labour exploitation**

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

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



provisions to combat forced labour in the domestic environment and protect domestic workers as well as take measures to implement them.

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

The Committee draws on the case law of the European Court of Human Rights and the above-mentioned international legal instruments for its interpretation of Article 1§2 of the Charter, which imposes on States Parties the obligation to protect effectively the right of 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 workers and “gig economy” or “platform economy” workers.

The Committee notes that the present report replies partially to the specific, targeted questions for this provision on forced labour (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 Law 60(I)/2014 on Prevention and Fighting against Trafficking in and Exploitation of Human Beings and the Protection of Victims, provides the legal framework in this field. Law 60(I) of 2014 criminalises labour trafficking and prescribes penalties of up to 10 years' imprisonment for offenses involving an adult victim and up to 20 years' imprisonment for those involving a child victim. According to GRETA's Report (Third evaluation round, GRETA (2020)04, 11 June 2020) this law is a new comprehensive anti-trafficking law (Law 60(I)2014) which reflects GRETA's recommendations, aimed at making anti-trafficking measures more effective.

The Committee notes that Cyprus has ratified the 2014 Protocol to the ILO Convention on Forced Labour (No. 29), but has not yet signed the ILO Convention No. 189 concerning decent work for domestic workers.

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

In this connection, the Committee observes from the 2020 GRETA Report on Cyprus that the number of victims of trafficking in human beings for the purpose of labour exploitation who have been identified by the Cypriot authorities have increased over the last years. However, according to NGOs, the detection of presumed victims of trafficking for the purpose of labour exploitation remains problematic. There are reports about heightened risks of exploitation in the agricultural and construction sectors, which employ migrant workers. The majority of labour exploitation cases are reportedly treated as labour disputes and the persons concerned are not treated as victims of trafficking in human beings (THB).

The Committee therefore asks that the next report provide information on the enforcement of the abovementioned criminal law legislation. The report should provide information (including statistics and examples of case law) on the prosecution and conviction of exploiters for slavery, forced labour and servitude during the next reference period, in order to assess how the legislation is interpreted and applied to combat labour exploitation.

### **Prevention**

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

The report indicates that in the context of protecting the rights of migrant workers employed in Cyprus, eliminating labour exploitation in general and promoting a safe and secure working environment for all migrants, the Ministry of Labour and Social Insurance has established a procedure for the effective and efficient examination of migrant workers' complaints regarding violations of terms of employment. This procedure ensures a fast out-of-court complaint resolution for victims of labour exploitation and it is imperative for safeguarding the working conditions of women migrants and foreign workers as well as those working in precarious employment.

With regard to the prevention of labour exploitation of third country nationals, in cases where Labour Relations Inspectors identify trafficking issues or any kind of exploitation attempts, they forward the aforementioned complaints to the competent authorities (i.e., Police Headquarters) for further action.

The above procedure is additional to the legal rights of workers to proceed with a civil legal action and file a case with the Labour Disputes Court for unpaid wages. The Department of Labour Relations can also initiate penal proceedings against the employer for unpaid wages.

In order to safeguard the enforcement of labour legislation, regular inspections are carried out by Labour Relations Inspectors in the areas of hospitality and manufacturing. When forced labour is suspected, the Labour Relations Inspector informs the immigration police for further

action. Based on the latest statistics, between January and September 2019, the Department of Labour Relations inspected 2421 work premises.

In that respect, the Committee asks that the next report provide information on measures taken to strengthen the capacities of labour inspectors in the prevention of forced labour and in particular information on the resources made available to them and the training of all bodies concerned in the fight against forced labour, including judges and prosecutors.

Pursuant to the positive obligations deriving from Article 1§2 of the Charter, the Committee asks that the next report provide information on the measures implemented that regulate businesses and other economic activity so as to ensure that they do not use forced labour. Information is also requested on whether the domestic legislation includes measures designed to force companies to report on action taken to investigate forced labour and exploitation of workers among their supply chains and requires that every precaution is taken in public procurement processes to guarantee that funds are not used unintentionally to support various forms of modern slavery.

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

The report does not indicate any detailed information related to the protection of victims of forced labour and their access to remedies.

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 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 are 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.

### **Domestic work**

The report indicates that as far as domestic work is concerned, inspections on private domestic premises can be carried out only after a court order.

The Committee recalls 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 the 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 of 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 privacy.

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

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

The report states that regarding measures taken to protect against exploitation workers in the “gig economy” or “platform economy” whose employment is very often precarious, employees have all the rights afforded through the relevant legislation. It must be noted that these forms of employment are rare to non-existent in Cyprus.

The Committee notes from other sources that since the global crises of 2008, the “gig economy” is growing and developing throughout the country affecting mostly young workers. Therefore, the Committee requests that the next report contain information on the concrete measures taken or envisaged to protect workers in the “gig economy” or “platform economy” against all forms of exploitation and abuse. It asks to be informed on the status and rights of these 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.

### ***3. Work of prisoners and other aspects of the right to earn one’s living in an occupation freely entered upon***

With regard to these issues, the Committee refers to its previous conclusion (Conclusions 2012), where it concluded that the situation in Cyprus is not in conformity with Article 1§2 of the Charter on the ground that the duration of alternative military service amounting to almost three years is excessive and constitutes a disproportionate restriction on the right to earn a living freely entered upon. The report does not provide any information on this point.

The Committee reiterates that the overall length of alternative military service amounting to almost three years is too long and therefore remains excessive and not in conformity with the Charter.

#### *Conclusion*

The Committee concludes that the situation in Cyprus is not in conformity with Article 1§2 of the Charter on the ground that the duration of alternative military service amounting to almost three years is excessive and constitutes a disproportionate restriction on the right to earn a living freely entered upon.

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

### *Paragraph 3 - Free placement services*

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

The Committee notes that the report does not provide any information on this provision and thus contains no replies to the questions asked in the Committee's previous conclusion, which was deferred.

The Committee asks the next report to provide information regarding quantitative indicators used by the Committee to assess the situation. In particular, it asks for the following information:

- the number of jobseekers and unemployed persons registered with public employment service;
- the number of vacancies notified to the public employment service;
- the number of persons placed via the public employment service;
- the placement rate (i.e. placements made by the employment services as a share of notified vacancies);
- placements by public employment service as a percentage of total hirings in the labour market.

In the meantime, the Committee considers that it has not been established that free placement services operate in an efficient manner.

### *Conclusion*

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

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

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

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

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 Cyprus has accepted Article 9, 10§3 and 15§1 of the Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to guidance and vocational training for persons with disabilities are 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) and vocational training for persons with disabilities (Article 15§1) (Conclusions 2012).

The Committee however deferred its conclusion on continuing vocational training (Article 10§3) (Conclusions 2020). Accordingly, the Committee defers its conclusion on Article 1§4.

### *Conclusion*

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

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

The Committee 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 Cyprus.

The Committee points out that it underlined in its previous conclusions (2012) that the report submitted to it by the authorities did not provide the information it needed to assess the situation and made several requests to the authorities. Pending receipt of the information requested, it deferred its conclusion.

The Committee notes that the information provided in the report does not satisfy the requests made (description of the vocational training system and the measures to facilitate access to it; equal treatment in access to vocational training). The Committee therefore considers that it is not established that the right to vocational training is actually guaranteed or that the situation in Cyprus is in conformity with Article 10.1.

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

The authorities indicate that the Human Resources Development Authority regularly conducts studies on trends and forecasts of employment and training needs.

The development authority has launched various programmes to address challenges and disparities in employment (integration and reintegration of the unemployed; support for further training), in particular for vulnerable groups (including young people).

The authorities indicate that they receive technical support from the EU under the Youth Guarantee initiative to address the issue of young people not in education, employment or training (NEETs). In this connection, they have set up technical committees in all regions with the co-operation of all relevant stakeholders.

The Committee nevertheless notes that the authorities do not indicate what these programmes involve and is not in a position to assess their content. The Committee therefore decides to reserve its judgment on this point. The Committee asks the authorities to indicate the nature of the education and the skills certification mechanisms and how these qualifications are relevant from the perspective of vocational integration.

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

The Committee notes that no information has been provided by the authorities on this issue. Consequently, considering that it is not able to assess whether the measures taken to integrate migrants and refugees into vocational education and training are in conformity with Article 10§1, the Committee reserves its position and asks the authorities to submit such information.

### *Conclusion*

The Committee concludes that the situation in Cyprus is not in conformity with Article 10§1 of the Charter on the ground that it has not been established that the right to vocational education is effectively guaranteed.



**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 Cyprus.

In its previous conclusion (Conclusions 2012), the Committee deferred its conclusion.

The Committee notes that Cyprus 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 its previous conclusion (Conclusions 2012), the Committee requested information on the legal basis for the right to individual leave for training for persons employed in the private sector. The report does not provide information on this point. Therefore, the Committee defers its conclusion and reiterates its request for information in this regard.

In its previous conclusion (Conclusions 2012), the Committee considered that the attendance of unemployed persons in programmes of vocational training and retraining was low. It requested information on the measures that the government planned to undertake in order to increase the participation of unemployed persons in training and retraining programmes. The Committee takes note of the information included in the report referring to schemes in place to promote the entry and re-entry of unemployed persons, including guaranteed minimum income recipients, into employment. It further requests information on the activation rate – i.e. the ratio between the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures.

In response to the Committees’ 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 provides information on schemes implemented by the Human Resources Development Authority (HDRA) aiming at developing employed persons’ skills. According to the report, digital inclusion and technological development, as well as health and safety at the workplace and green skills, are among the priorities of training schemes. Such schemes are the ‘Single-company training programme in Cyprus’, which provides incentives to employers to organise training programmes and the ‘Single-company training programme abroad’, which provides incentives to employers to participate in training programmes abroad with the aim of transferring knowledge and skills in the fields of innovation, new technology and technical know-how. In addition, the schemes ‘Multi-company training programmes’ and ‘High-priority multi-company training programmes’ provide continuing training taking into account employees’ training needs.

### *Conclusion*

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

## **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 Cyprus.

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

The Committee notes from the report that the Ministry of Labour is implementing several reintegration measures to combat long-term unemployment, such as the provision of personalised employment services, in particular to persons belonging to vulnerable groups, including young persons and the long-term unemployed, or the employment incentive scheme for recipients of RMI (Guaranteed Minimum Income) in connection with the completion of a three-month practical training course. A new electronic Employers Platform has been created to facilitate the recruitment of staff from an electronic register of unemployed persons.

According to the report technical committees have been set up in all regions with members from the social partners, local authorities, other departments of the Ministry of Labour, Welfare and Social Insurance, the Ministry of Education and Culture, the Human Resources Development Authority and the Youth Board. The aim of these committees is to share information on how to reach and activate young people and to create synergies between the Public Employment Service and other participating organisations in order to activate of young persons Neither in Employment, Education or Training (NEETS).

The Committee also notes that within the framework of the « Youth Guarantee » initiative, Cyprus has received technical support from the European Union for the activation of young NEETs.

The Committee recalls that the main indicators of compliance with this provision are the types of training and retraining measures available on the labour market to combat long term unemployment, the number of persons undergoing such training, and the impact of the measures on reducing long-term unemployment.

Therefore, the Committee requests that the next report provide information in this regard, including with regard to persons over 25 years of age.

### *Conclusion*

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

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

### *Paragraph 5 - Full use of facilities available*

The Committee notes that the report submitted by Cyprus contains no information on Article 10§5.

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 Cyprus was not in conformity with Article 10§5 of the Charter on the ground that it has not been established that the equal treatment of nationals of other States Parties as to fees and financial assistance is guaranteed ( Conclusions 2012).

The present report containing no information on this issue, therefore the Committee reiterates its previous conclusion.

### *Conclusion*

The Committee concludes that the situation in Cyprus is not in conformity with Article 10§5 of the Charter on the ground that it has not been established that nationals of other States Parties to the Charter who are lawfully resident or regularly working in Cyprus are granted equal treatment with respect to fees and financial assistance in higher education.

## **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 Cyprus.

It previously deferred its conclusion (Conclusions 2012).

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**

According to the report the Laws for the Education and Training of Children with Special Needs (1999-2014) are the legislative framework which regulate the identification of children with disabilities, and the support to be provided to those who need it. The legislation also provides for the development of an Individualized Educational Programme for a child with special needs and for the ongoing evaluation of the child's progress. All children are eligible for additional educational support.

As regards the definition of disability 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 report states that most children with disabilities are educated within the mainstream classroom, at their local school. Special emphasis is given to ensuring access to the curriculum through the use of assistive technology (computers, specialized software, tablets, joysticks and tracker balls, easy-to-use keyboards, communication devices), changes to teaching and learning arrangements, classroom organisation, extra time during exams etc.

Furthermore, information that is normally provided in writing is made more accessible by providing it in Braille or in large print for children with visually disabilities whereas sign language interpreters are available for deaf children. The Ministry of Education, Culture, Sports and Youth (MOECSY) ensures that schools have suitable infrastructure to accommodate the needs of the children with disabilities.

Special educational provision is also provided in Special Units within mainstream schools, as well as special schools. The report states that a very small percentage of children with disabilities (less than 1% of the school population) are educated in Special Units. Special Units provide more intensive educational support to a small number of pupils in a class whilst maintaining contact and integration with a specific reference class of the school following the regular curriculum in specific subjects. Children educated in these units participate in all schools' extracurricular activities, school concerts and field trips along with their non-disabled classmates.

Less than 1% of the school population is educated in special schools. Some special schools are built within the boundaries of mainstream schools. All special schools develop networks of contacts and joint activities with mainstream schools to minimize segregation. They have the appropriate staff (special teachers, speech therapists, occupational therapists, psychologists, music therapists, physiotherapists, nurses and other specialists as well as auxiliary staff) in order to support and provide the essential means to meet the needs of all children.

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), 8.10% of children were recognised as having SENs; of these 82,47% attended mainstream schools, and 10,30% attended special schools.

The Committee notes from the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities (CRPD/C/CYP/CO/1, May 2017) that the UN Committee noted that segregated education remains rooted in the education system, which is also frequently reflected by the attitudes of teachers and other relevant professionals. The Committee asks for the Government's comments on this.

The Committee also notes from the Submission of the Pancyprrian Alliance for Disability to the Committee on the Rights of the Child on the implementation of the Convention on the Rights of the Child with a focus on Children with Disabilities (July 2019) (outside the reference period) that the legislation governing the education of children with special educational needs continues to be governed by the individual model of disability and focuses on the individual and his/her disability, resulting in the exclusion in law of certain categories of children from the mainstream education system, because of their disability. Teaching staff in mainstream schools do not yet receive appropriate training on disability matters. The teaching method followed by Ministry of Education is not in line with the principle of universal design for learning. As a result, children with disabilities are prevented from enjoying equal opportunities in mainstream education. Moreover, as some essential therapies such as physiotherapy, occupational therapy and speech therapy are provided only in special schools, parents prefer that their children with disability attend to special schools instead of mainstream ones. The Committee asks for the Government's comments on this.

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.

As regards measures in place to address costs associated with education the Committee asks whether children with disabilities/SEN are entitled to financial support to cover any additional costs that arise due to their disability.

### ***Measures aimed at promoting inclusion and ensuring quality education***

The reports states that the MOECSY is receiving technical assistance from the Structural Reform Support Service (SRSS) of the European Commission and in cooperation with experts from the European Agency of Special Needs and Inclusive Education is in the process of reforming the existing law of Special Education, so that the education system becomes more efficient and inclusive. The experts have submitted a new draft framework law which was discussed with all stakeholders and now the project is in its second phase for the preparation of regulations that will accompany the law.

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 Center (MDAC) v. Belgium Complaint No.109/2014, Decision on the admissibility and merits 16 October 2017, International Federation for Human Rights (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.

### ***Remedies***

The report provides no information as regards remedies for children with disabilities /SEN. The Committee recalls from its previous Conclusion (Conclusions 2012) that complaints may be made to the Equality Body. 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 defers its conclusion.



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

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

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

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.

### ***Legal framework***

The Committee previously concluded that the situation in Cyprus was not in conformity with Article 15§2 of the Charter on the ground that it had not been established that persons with disabilities were guaranteed effective protection against discrimination in employment (Conclusions 2012).

The Committee had previously requested information on the effective implementation of the reasonable accommodation obligation.

The report provides little information in this respect. According to the report the right of persons with disabilities to effective access in employment through the provision of reasonable adjustments is defined in Article 5 of the Persons with Disabilities Laws which states that “the principle of equal treatment of persons with disabilities in employment is effectively applied with the provision of reasonable adjustments and for this purpose the employer takes all suitable measures in accordance with the needs presented at a specific situation so that the person can have access to a job, execute or be promoted at the occupation or be trained as long as these measures do not constitute a disproportionate burden on the employer. The burden is not disproportionate if it is adequately compensated with measures taken in the framework of the state policy for persons with disabilities”. No further information is provided.

The Committee notes from the report of the Independent Authority for the Promotion of the Rights of Persons with Disabilities (IMM), written contribution to the UN Committee on the Rights of Persons with Disabilities following the publication of the List of Issues, 2016, that disability discrimination in employment is amongst the most common subject matters of complaints received by the IMM. Further according to IMM the extent of the obligation to provide reasonable accommodation in employment is highly unknown amongst employers.

The Committee again requests the next report to provide information on measures taken to ensure that the principle of reasonable accommodation is implemented effectively, including evidence to demonstrate that people with disabilities enjoy reasonable accommodation in the workplace and information on mechanism established to monitor the effective implementation of the reasonable accommodation provisions. Meanwhile it reiterates its previous conclusion of non-conformity.

### ***Access of persons with disabilities to employment***

According to the report there are no statistics on the number of persons with disabilities in employment or registered as unemployed. General statistics from the Statistical Service though show that only one out of two persons with disabilities works.

The Committee notes from the Concluding Observations of the UN Committee on the Rights of persons with disabilities (CRPD/C/CYP/CO/1, May 2017) that the UN Committee was concerned by the high level of unemployment and lack of gender, age and disability disaggregated data regarding employment of persons with disabilities. It recommended that the State party collect data on the employment of persons with disabilities, disaggregated by gender, age and type of impairment. Likewise, the Academic Network of European Disability

Experts (ANED), European Semester 2017/2018 country fiche on disability states that an issue that raises significant concerns is the lack of national data on disability.

The Committee previously highlighted (Conclusions 2012) that it needs to systematically be provided with updated figures concerning the total number of people with disabilities employed (on the open market and in sheltered employment), those benefiting from employment promotion measures and those seeking employment as well as those that are unemployed. It stated that in the absence of these figures, it cannot be established that the situation is in conformity with Article 15§2 of the Charter.

The Committee recalls that it also previously noted that in order to assess the conformity of the situation under Article 15§2 it has to know how many persons with disabilities benefit from the measures in place to enable their integration into the ordinary labour market as well as the general rate of progression of persons with disabilities from sheltered employment to the ordinary labour market (Conclusions 2012).

Therefore, in light of the incomplete information on the total number of people with disabilities employed (on the open market and in sheltered employment), those benefiting from employment promotion measures and those seeking employment as well as those that are unemployed, the Committee concludes that it cannot be established that persons with disabilities are guaranteed effective and equal access to employment.

### ***Measures to promote and support the employment of persons with disabilities***

The report states that the Department for Social Inclusion of Persons with Disabilities implements through laws and schemes the following measures in order to promote access to employment for persons with disabilities:

- Assesses and certifies disability and capability of candidates with disabilities to be recruited in the wider public sector through a law providing for a quota of 10% of vacant posts in the public and educational service and the semi-government organisations. From 2010 until 2018, 185 persons were recruited through the law.
- Subsidizes and monitors NGO who operate 23 Supported Employment Programs all over Cyprus through which 300 persons mostly with intellectual or mental disability are employed in the open labour market. Support is provided through the employment of Job Coaches responsible for groups of 5-25 persons.
- Subsidizes the establishment of Small Self Employment Units in any type of occupation with an amount up to €8,500 for the purchase of equipment, raw materials or initial capital. 10-15 new Units are established annually through this scheme.

Further according to the report in order to enhance support services and strengthen registered unemployed persons with disabilities to find a job the Department of Labour has recruited 27 new Job Counsellors who were specially trained to serve persons with disabilities among other members of vulnerable groups.

The Committee notes from the above mentioned Concluding Observations of the UN Committee on the Rights of Persons with Disabilities (CRPD/C/CYP/CO/1 April 2017) that the UN Committee was concerned about the insufficient measures to promote the inclusion of persons with disabilities on the open labour market regardless of the type of impairment and recommended that the State party ensure access to employment on the open labour market, including by ensuring that the private sector is also covered by a quota system. The Committee asks for the Government's comments on this.

### ***Remedies***

The Committee asks the next report to provide updated information on remedies as well examples of relevant case law. It recalls that it recalls that legislation must confer an effective remedy on those who have been discriminated against on grounds of disability and denied reasonable accommodation.

### *Conclusion*

The Committee concludes that the situation in Cyprus is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that:

- persons with disabilities are guaranteed effective protection against discrimination in employment;
- persons with disabilities are guaranteed effective and equal access to employment.

## **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 Cyprus.

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 notes that the report provides virtually no information on this provision.

The Committee previously concluded that the situation in Cyprus was not in conformity with Article 15§3 of the Charter on the ground that it has not been established that disabled people are effectively protected against discrimination in the fields of housing, transport and cultural and leisure activities in practice (Conclusions 2012).

### ***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. It recalls that Act No. 127(I)/2000 on persons with disabilities expressly prohibits discrimination on grounds of disability and refers to mobility, transport, telecommunications, culture and leisure. It previously asked for additional information on the Act, as well as information on remedies and case law (Conclusions 2012).

The report provides no information on the legislation nor on remedies. The Committee asks the next report to provide comprehensive information on the legislation which prohibits discrimination on grounds of disability in the fields covered by Article 15§3, as well as information on remedies and examples of relevant case law. If this information is not provided in the next report there will be nothing to establish that the situation is in conformity with the Charter.

### ***Consultation***

As regards the consultation of persons with disabilities the Committee previously asked the next report to respond to comments made in the 2010 report on measures to combat discrimination (by the European Network of Legal Experts in the field of Non-Discrimination) to the effect that despite the law, the disability movement is not consulted on many policy decisions affecting them (Conclusions 2012).

The report provides no information on this point. The Committee recalls that Article 15§3 of the Charter requires inter alia that persons with disabilities should have a voice in the design, implementation and review of coordinated disability policies aimed at achieving the goals of social integration and full participation of persons with disabilities. It asks the next report to provide information on consultation with people with disabilities, as well as other measures to ensure their participation in the design, implementation and review of disability policies.

If this information is not provided in the next report there will be nothing to establish that the situation is in conformity with the Charter.

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

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

The Committee previously noted a number of benefits and allowances for persons with disabilities, such as the Severe Mobility Impairment Benefit and Financial Assistance for Technical Equipment Benefit (Conclusions 2012). The Committee asks for updated information on different allowances and benefits available to persons with disabilities in order to them to live independently in the community.

As regards personal assistance the Committee notes that the Council of Ministers approved on 27.9.2017 a new scheme for the Inclusion of Persons with Disabilities in Supported Living Homes and Programmes through a project financed by the European Social Fund (see below under Housing).

According to the report supported living programmes operate under the responsibility of Social Welfare Services in the form of Day Care Centers or 24 hours care institutions. In 2018, 40 programs for adults or children with disabilities were subsidized with total expenditure of €3.483.500.

No other information is provided on personal assistance schemes. The Committee previously asked whether personal assistance or home help services are free of charge or whether beneficiaries may have to meet some of the cost (Conclusions 2016). The Committee reiterates its question. If this information is not provided in the next report there will be nothing to establish that the situation is in conformity with the Charter.

The Committee asks the next report to provide information on personal assistance; the legal framework, the implementation of the scheme, the number of beneficiaries, and the budget allocated. It also asks whether funding for personal assistance is granted 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 asks the next report to provide updated information on the availability of technical aids. The Committee recalls from previous conclusions that financial assistance is provided to cover the cost of some technical aids (Conclusions 2012), however the Committee

asks whether the grants cover all costs or whether the persons concerned must contribute themselves to the cost.

### ***Housing***

According to the report the Council of Ministers approved in 2017 a new scheme for the Inclusion of Persons with Disabilities in Supported Living Homes and Programs through a project financed by the European Social Fund.

The purpose of the new project is to support persons with disabilities to live in homes in the community with maximum autonomy with respect to their preferences and choices. Under the project 10 new homes in the community were built for 48 persons with intellectual, or visual disabilities or autism in all cities in Cyprus. Public contracts have been signed with NGO's and companies to operate the new Homes under the monitoring and supervision of the Department for Social Inclusion with a total budget of €8 m. for the period 2020-2023.

According to other sources (Academic Network of European Disability Experts (ANED country report, Cyprus on Living independently and being included in the community 2018-2019) there is a trend towards de-institutionalisation, as in 2016 there were measures that indicate an effort to close down institutions and to develop more community living residences for assisted and/or independent living. However according to that source data is limited.

The Committee notes that the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations (CRPD/C/CYP/CO/1 2017) expressed concern about the significant number of persons with disabilities who are currently still institutionalized. It asks for the Governments comments on this.

The Committee asks the next report to provide information on the legal framework governing housing for persons with disabilities.

The Committee also 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 and whether financial assistance was provided to adapt existing housing.

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

Pending receipt of the information requested the Committee reserves its position on this issue.

### ***Mobility and transport***

The report provides no information on the accessibility of the transport system or the built environment. The Committee recalls that it previously requested information on the accessibility of the public transport for persons with disabilities (Conclusions2012). The Committee reiterates its previous conclusion that it has not been established that persons with disabilities have effective access to transport.

The Committee notes that the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations (CRPD/C/CYP/1/Co, 2017) expressed concern that public transport is insufficiently accessible in all its forms, including that only one third of buses are accessible. It asks for the Government's comments on this.

The Committee requests the next report to provide information on measures taken to ensure the accessibility of transport system (land water rail) and the built environment. It also asks for information on the percentage of buildings accessible, and on sanctions (including the nature of sanctions and the number imposed) in the event of non-compliance with accessibility regulations.

### ***Communication***

The Committee previously requested information on measures taken to promote also access to new information and telecommunication technologies (Conclusions 2008, 2012). No information has been provided on this issue. Therefore, the Committee reiterates its previous conclusion and in the meantime concludes that it had not been established that persons with disabilities have effective access to information and telecommunication technologies.

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

The Committee previously found the situation not to be in conformity on the grounds that it had not been established that there was effective access to cultural and leisure activities (Conclusions 2012). No information is provided in the report therefore the Committee reiterates its previous conclusion.

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, especially for those in rural areas.

### ***Conclusion***

The Committee concludes that the situation in Cyprus is not in conformity with Article 15§3 of the Charter on the grounds that it has not been established that:

- persons with disabilities have effective access to transport;
- persons with disabilities have effective access to communication technologies;
- persons with disabilities have effective access to cultural and leisure activities.

**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 Cyprus.

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***

The report does not contain any information on this point.

The Committee observes that Article 5 of Law No. 177(I)/2002 stipulates the right to equal pay for work of equal value, irrespective of gender. It also provides that when a professional classification system is used for the determination of remuneration, such a system must be based on criteria common to male and female workers and must be designed to exclude any discrimination based on gender. In accordance with Article 7 of the Law, any existing legislative provision contrary to the provisions of this law shall be repealed if it is directly or indirectly discriminatory as regards gender. It also takes into account that it considered the situation to be in conformity with the Charter in this respect (Conclusions 2004, 2006, 2008 and 2012, Cyprus, Article 20).

The Committee also notes from the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: Cyprus 2018 that domestic law does not lay down parameters for establishing the equal value of the work performed, such as the nature of the work, training and working conditions.

The Committee asks the next report to contain information on this point and it reserves its position on this issue until the information pending is received.

#### ***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. Moreover, 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 meaning 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 should be 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). Employees who try to enforce their right to equality must be legally protected against any form of reprisals from their employers, including not only dismissal, but also downgrading, changes to working conditions and so on.

The Committee notes that, according to from the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: Cyprus 2018 that access to courts is safeguarded for alleged victims of gender discrimination. Anti-discrimination/gender equality interest groups may introduce cases before courts on pay discrimination. Law No. 24/1967 stipulates that the applicant must submit his/her application to the Industrial Disputes Tribunal no later than one year after the relevant event. The

Committee also noted in the Collective Complaint in this regard (UWE v. Cyprus, decision on the merits of 5 December 2019) that the situation of Cyprus was in conformity with the Charter in this regard.

The report states that the shift of the burden of proof is guaranteed. More particularly, the legislation provides that in any judicial proceedings (except for criminal proceedings) and provided that the plaintiff whose rights are allegedly being violated presents facts which prove the violation, the Court obliges the employer to prove that there has been no contravention of the Law. The legislation provides for the same shift in the burden of proof in cases submitted to the Ombudsman.

There are no ceilings applicable for compensation for victims of sex discrimination. In its previous conclusion, the Committee considered the situation in respect of these two aspects to be in conformity with the Charter.

The Committee requests the next report to include information about existing national case law relating to breaches of the right to equal pay, as well as on sanctions imposed. It further 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.

### ***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.

As regards *pay transparency* in the labour market and notably the possibility for workers to receive information on pay levels of other workers and available information on pay, the report states that Article 6A of the legislation provides that employers are obliged to promote in a planned and systematic way the equal pay principle in workplaces. In this context, they are encouraged to provide their employees with appropriate information on equal pay between men and women. Such information may include an overview of the percentages of men and women at different levels of the organisation; their pay and pay differentials; and possible measures to improve the situation in cooperation with employees' representatives.

The report further states that pay transparency is also safeguarded through the provisions of the collective agreements. The Ministry of Labour, Welfare and Social Insurance considers collective agreements and collective bargaining as a defining tool for establishing the terms and conditions of employment ensuring healthy labour relations.

The report further states that granting an employee access to a colleague's contract or pay slip, would most likely be in violation of the national legislation and the relevant EU Directive 95/46/EC on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of such Data. This has been an element, according to the report, which has not allowed to develop the measures suggested in the European Commission

Recommendation 2014/124/EU on “strengthening the principle of equal pay between men and women through transparency”. Therefore, the measures adopted are confined to the obligation of providing, upon request, information on pay levels by gender, issuing average/median pay level reports, of preparing pay audits, but does not allow to access other type of information in Cyprus.

The Committee recalls that it has established in its assessment on this issue under Collective complaint No. 127 (*op. cit.*, §§153 and ff) that it has not been demonstrated that the notion of work of equal value is adequately defined in domestic case law and, therefore, due to the lack of pay transparency and hence of information on comparable jobs and pay levels, it may be difficult for a potential victim of gender pay discrimination to successfully bring a case to court. The Committee considered that the situation as regards pay transparency is not in conformity with the Charter. It further requests that the State informs on the next report on the follow up to Collective Complaint No. 127/2016.

The Committee also recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter and does so therefore every two years (under thematic group 1 “Employment, training and equal opportunities”, and thematic group 3 “Labour rights”). Articles 20 and 4§3 of the Charter require the possibility to make job comparisons across companies (See in this respect Complaints 124 to 138, *UWE v. Belgium*, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, 5-6 December 2019).

As regards *comparison across companies*, the Committee had previously concluded that the situation in Cyprus was in conformity with Article 20 of the Charter. In 2009, a new amended Law was enacted (L. 38(I)/2009), transposing into national law the new Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). The Law includes an amendment, through which, the comparison of wages between employees was extended to enterprises of the same group of companies (Conclusions 2012, Cyprus, Article 20).

### ***Enforcement***

The report states that enhancing pay transparency is done through strict implementation of the Law providing for the employer’s obligation to inform employees, in writing, of the main terms of the contract or employment relationship. On-site inspections are the key mechanism for the enforcing the legislation. The report does not contain any information regarding the number of inspections nor the role of equality bodies.

The Committee asks that the next report provide further information about how equal pay is ensured, notably, the work of monitoring developed by equality bodies and the Labour Inspectorate in this respect.

### ***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 refers to the fact that employers that promote pay transparency through their policies and practices, can be granted with certification by the National Certification Body which was established in April 2014, by decision of the Council of Ministers. The National Certification Body is responsible for granting certifications according to the national model for certifying enterprises which adopt policies promoting gender equality in the workplace. The Certification Body is chaired by the Ministry of Labour, while its members are the Gender Equality Commissioner and representatives of the employers' and employees' associations. According to the model of certification, companies have the right to apply either (a) for "Best Practice" for individual practices applied, or (b) for "Equality Employer" for adopting a comprehensive system of promoting gender equality in their workplace. 52 companies have been awarded a certification so far.

Concerning the gender pay gap, the Committee notes from Eurostat that the gender pay gap stood at 21.8% in 2006, at 16.8% in 2010, at 13.2% in 2015, 12.3% in 2016, 11.2% in 2017 and 10.4% in 2018. The EU 28 average in 2018 was 15% (data published on 29 October 2020). The overall earnings gap in 2014 was 26.9%. The adjusted or "unexplained" gender pay gap was at 12.2% compared to an EU-28 average of 11.5% (2014 data, see the Eurostat study "A decomposition of the unadjusted gender pay gap using Structure of Earnings Survey data, 2018).

The Committee notes that the Government has made efforts to reduce the gender pay gap and has taken measures to raise awareness through gender mainstreaming. The Committee also observes that the gender pay gap, as an indicator of the effectiveness of these measures, has changed in a significant manner in the last years, including those covered by the current cycle. The gender pay gap is below the EU average. The measures adopted by the Government have achieved measurable progress in this respect. Therefore, the situation in this respect is in conformity with Article 20(c) of the Charter.

#### *Conclusion*

The Committee concludes that the situation in Cyprus is not in conformity with Article 20(c) of the Charter on the ground that pay transparency is not guaranteed.

## Partly dissenting opinion of Barbara KRESAL relating to Article 20 (Cyprus)

I agree with the conclusion that the situation in Cyprus is not in conformity with Article 20 of the Charter, but in my opinion, additional ground for non-conformity should be added, namely that the obligation to make sufficient measurable progress in reducing the gender pay gap has not been fulfilled. My dissent is therefore limited only to the last part of the assessment which appears in the Section ‘Obligations to promote the right to equal pay’.

The State Party must adequately promote the right to equal pay with a view to ensure its effective realisation in practice, and it must accordingly demonstrate adequate ‘results’ in terms of the relevant indicators. These indicators are used to assess the effectiveness of the policies and measures adopted. As regards the gender pay gap indicator, I consider that it is of course necessary to demonstrate a positive trend, i.e. that the gender pay gap has been decreasing, however, this does not suffice (even if it has changed in a significant manner over a period of time), the gender pay gap must also be sufficiently low, minimal. Furthermore, it should not be relevant for the assessment whether the gender pay gap is below the EU average. Non-discrimination is one of the cornerstones of international human rights law and at the very heart of the Charter, explicitly enshrined in Article E of the Charter. It is the essential substance of all human rights, including the right to fair remuneration, and it is explicitly guaranteed in relation to pay/remuneration by Article 4§3 and Article 20.c of the Charter. The right to equal pay for equal work or work of equal value must be guaranteed here and now.

In its decisions on the UWE collective complaints (*University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden*, Collective Complaints Nos. 124-138/2016, Decisions on the merits 5.-6.12.2019; see, in particular, the preliminary considerations and the assessment parts), the Committee developed strict assessment criteria with respect to the right to equal pay. It is important that these criteria are also applied in a strict and consistent manner, either in the collective complaints procedure or in the reporting procedure when assessing the situation in the States Parties as regards the right to equal pay. The fact that actual realisation in practice of gender equality in general, and equal pay as one of its aspects, is a persistent, long-standing problem in all States Parties should not result in loose criteria or loose application of strict criteria when assessing the state compliance with their obligations stemming from Article 4§3 and Article 20.c of the Charter.

Given the importance of the right to equal pay and if the criteria developed by the Committee as regards the promotion of equal pay are applied in a strict and consistent manner, the gender pay gap in Cyprus is, in my opinion, too high, indicating that the measures taken in this respect and the progress made are – despite positive trends – still insufficient.

An important emphasis of the Committee is 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” and that “it is necessary to analyse the causes of the gender pay gap with a view to designing effective policies aimed at reducing it” (see Complaints Nos. 124 to 138, UWE, *op. cit.*). Without identifying and understanding the causes of gender pay differences it is impossible to design adequate measures that could effectively address this problem.

It is also true that the gender pay gap is not *per se* evidence of pay discrimination. However, it is one of the most widely accepted indicators of the differences in pay which, together with other relevant indicators, reveals pay inequalities that exist in practice and, to a certain extent, also the causes of those inequalities. Unequal pay is a complex problem. Only a combination of various indicators could give a better picture and allow for a better assessment (for example, if the employment rate of women is high, the gender pay gap is usually also higher and *vice versa*, therefore, the relative gender pay gap in correlation with the female employment rate

is probably more relevant than absolute figures; in addition to the unadjusted gender pay gap, the adjusted gender pay gap should also be taken into account, together with the decomposition and analysis of the explained and unexplained gender pay gap, as well as the overall gender gap in earnings, differences between sectors of activity, occupations, age groups and similar, the female employment rate etc.). The Committee recognises the complexity of the concept of (un)equal pay and in this context refers to various indicators that can be used in the assessment. However, the Committee's assessment of the situation in Cyprus as regards the obligation to promote the right to equal pay is nevertheless mainly based only on the unadjusted gender pay gap, its changes over time and its comparison with the EU average, without sufficiently taking into account various other relevant indicators mentioned above.

## **Article 24 - Right to protection in case of dismissal**

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

### **Scope**

In its previous conclusions (Conclusions 2008 and 2012) the Committee held that the situation was not in conformity with the Charter as the law excluded from protection against dismissal employees who had not completed a continuous period of 26 weeks with their employer regardless of their qualifications.

The Committee notes from the report of the Governmental Committee (2013) that the Government has indicated its willingness to discuss with the Social Partners the possibility of amending the legislation in order to bring the national legislation in line with the Charter. However, the national efforts had stumbled upon the fact that neither the European Social Charter nor the Committee provide a definition of what constitutes a reasonable duration of a probationary period in relation to item 2 of Appendix to Article 24. According to the representative of Cyprus, the Government is not in a position to propose to the Social Partners specific amendments to the legislation.

The Committee recalls that under Article 24 of the Charter workers undergoing a period of probation or a qualifying period of employment, can be excluded from the protection against dismissal, provided that this is determined in advance and is of reasonable duration. The Committee has held (Conclusions 2003, Italy) that exclusion of employees from protection against dismissal for six months or 26 weeks is not reasonable if applied indiscriminately, regardless of the employee's qualifications. The Committee notes that there are no changes to the situation which it has previously considered not to be in conformity with the Charter. Therefore, the Committee reiterates its previous finding of non-conformity on the ground that the employees who have not been employed with their employer for a continuous period of 26 weeks (probationary period) are not entitled to protection against dismissal.

In its previous conclusion (Conclusions 2012) the Committee examined whether termination of employment was only permitted when it was objectively and reasonably justified by a legitimate aim such as legitimate employment policy, labour market objectives or the operational requirements of the undertaking. It noted in this respect that the protection afforded under the Termination of Employment Law no longer applied when the employee reached pensionable age. The Committee considered that this situation was contrary to the Charter as the categories of persons excluded from protection against unlawful dismissal went beyond what is allowed under the Appendix to the Charter.

The Committee notes from the information provided by the representative of Cyprus to the Governmental Committee (T-SG (2013) that the Social Insurance legislation allows for a person who receives a pension to continue working beyond the pensionable age of 65 without a reduction to the pension. In addition, an employee who continues to work beyond the pensionable age may also receive his/her pension rights from a supplementary pension scheme without any reduction. In view of the above, the Social Partners have agreed that since the worker who is over 65 receives an income in the form of a pension and perhaps a supplementary pension and, since the termination of employment does not constitute any loss of career prospects, the termination of employment legislation should not apply to persons who have reached statutory pensionable age. Most collective agreements which include a retirement age set it at 65 or below, while in cases where the collective agreement does not include such a clause or when there is no collective agreement, the practice is to retire when the worker reaches the pensionable age. To this extent, most employees over the age of 65 in practice are employed on a casual basis.

The Committee further notes from the report in this regard that an employee who is dismissed unlawfully by an employer, with whom he/she has been continuously employed for not less

than 26 weeks, has a right to compensation payable by the employer. An employee is not entitled to compensation for termination of employment if before the date of termination of his/her employment he/she has attained the pensionable age.

The Committee notes that the situation which it has previously found not to be in conformity with the Charter has not changed. Therefore, it reiterates its previous finding of non-conformity on the ground that the categories of persons excluded from protection against unlawful dismissal goes beyond what is allowed under the Appendix to the Charter.

The Committee addressed specific targeted questions to the States (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”) concerning strategies and measures that exist or are being introduced to ensure dismissal protection for workers (labour providers), such as “false self-employed workers” in the “gig economy” or “platform” economy.

The report states in this regard that if an employee feels that he/she has been unfairly dismissed, then he/she can make an appeal to the Industrial Disputes Court in order to claim compensation. The same rule applies to workers in the “gig economy” or “platform economy”. As regards cases of dismissals of “false self-employed workers” in the “gig economy” or “platform economy”, the affected persons have the right to file a complaint to the Director of the Social Insurance Services in order to investigate whether they were employees or self-employed. If an employment relationship is confirmed, the employees may proceed with an appeal to the Industrial Dispute Court in order to claim compensation for unlawful dismissal.

### ***Obligation to provide valid reasons for termination of employment***

The Committee notes that there have been no new developments.

### ***Prohibited dismissals***

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

The Committee addressed to the Government a targeted question concerning the safeguards that exist against dismissal due to temporary absence from work due to illness or injury (e.g. time limit on protection against dismissal, rules applying in case of permanent disability and compensation for termination of employment in such cases).

The report states that concerning dismissal due to sickness, notice of termination to an employee who is on sick leave for a period up to one year (12 months) is prohibited during the aforementioned period and additionally for 1/4th of that period. The Committee considers that this time limit for temporary absence is in conformity with Article 24 of the Charter. It asks what rules apply in case of permanent disability and compensation for termination of employment in such cases.

### ***Remedies and sanctions***

In its previous conclusion (Conclusions 2012) the Committee noted that unlawfully dismissed employee may appeal either to Industrial Disputes Court or to the District Court which takes into consideration the same criteria for the purpose of determining the amount of compensation due to unlawful dismissal. In the case of appeal to the District Court, there is no limit to the amount of compensation the District Court may award. Furthermore, the District Court may, if there is a breach of contract according to the provisions of the Contracts Law, consider among others the financial losses incurred and the damage suffered by the victim. The victim of unlawful dismissal may seek from the District Court to order reinstatement and, according to the provisions of the Termination of Employment legislation, the District Court may order such remedy.



The Committee also notes from the report that, in cases where the termination of employment of an employee who has been working for an employer employing more than 19 employees, is considered as unlawful, the Industrial Disputes Court may order reinstatement if, in the case in point, its opinion is justified by the circumstances and the employee has asked for this remedy. Together with the reinstatement the Court may order the payment of compensation for any real damages the employee has suffered as a result of his/her dismissal.

#### *Conclusion*

The Committee concludes that the situation in Cyprus is not in conformity with Article 24 of the Charter on the grounds that:

- the employees who have not been employed with their employer for a continuous period of 26 weeks (probationary period) are not entitled to protection against dismissal;
- the categories of persons excluded from protection against unlawful dismissal goes beyond what is allowed under the Appendix to the Charter.

