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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions XXII-1 (2020)

CZECH REPUBLIC

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 the Czech Republic, which ratified the 1961 European Social Charter on 3 November 1999. The deadline for submitting the 17th report was 31 December 2019 and the Czech Republic submitted it on 6 January 2020.

The Committee recalls that the Czech Republic 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 XX-1 (2012)).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions XX-1 (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 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerned the following provisions of the thematic group I "Employment, training and equal opportunities":

- the right to work (Article 1);
- the right to vocational guidance (Article 9);
- the right to vocational training (Article 10);
- the right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement (Article 15);
- the right to engage in a gainful occupation in the territory of other Contracting 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 1 of the Additional Protocol).

The Czech Republic has accepted all provisions from the above-mentioned group except Articles 1§4, 9, 10, 15§1, 18§1, 18§2 and 18§3.

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

The conclusions relating to the Czech Republic concern 5 situations and are as follows:

– 2 conclusions of conformity: Articles 1§1 and 1§3.

– 1 conclusion of non-conformity: Article 1 of the Additional Protocol.

In respect of the other 2 situations related to Articles 1§2 and 15§2, the Committee needs further information in order to examine the situation.

The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by the Czech Republic under the 1961 Charter.

The next report from the Czech Republic 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 4 of the Additional Protocol).

The deadline for submitting that report was 31 December 2020.

Conclusions and reports are available at www.coe.int/socialcharter.

Article 1 - Right to work

Paragraph 1 - Policy of full employment

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

The Committee recalls that in 2012, it deferred its conclusion pending information on the active labour market measures available in general to jobseekers and the number of persons benefiting from the different types of active measures; on any specific employment support measures set up for women and the long-term unemployed; on possible plans to expand the coverage of active measures beyond the mere 9.7% of jobseekers who benefited from activation measures in 2009; and on the monitoring and assessment of the effectiveness of employment policies (Conclusions XX-1 (2012)).

Employment situation

According to Eurostat, the GDP growth rate fluctuated during the reference period, falling from 5.4% in 2015 to 2.5% in 2016, before rising sharply to 5.2% in 2017 and falling again to 3.2% in 2018. This rate is still higher however than the average for the 28 European Union (EU) member States (2% in 2018).

The overall employment rate (persons aged 15 to 64 years) rose from 70.2% in 2015 to 74.8% in 2018, exceeding the EU 28 average (68.6% in 2018).

The employment rate for men increased from 77.9% in 2015 to 81.8% in 2018, which is higher than the EU 28 average (73.8% in 2018). The employment rate for women rose from 62.4% in 2015 to 67.6% in 2018, exceeding the EU 28 average (63.3% in 2018). The employment rate for older workers (55 to 64-year-olds) increased from 55.5% in 2015 to 65.1% in 2018, which is higher than the EU 28 average (58.7% in 2018). Youth employment (15 to 24-year-olds) remained stable, namely 28.4% in 2015 and 2018, a rate which is lower than the EU 28 average (35.3% in 2018).

The overall unemployment rate (persons aged 15 to 64 years) decreased considerably, from 5.1% in 2015 to 2.3% in 2018, which is well below the EU 28 average (7% in 2018). The same was true of the unemployment rates for the categories below.

The unemployment rate for men decreased from 4.3% in 2015 to 1.8% in 2018 (EU 28 average in 2018: 6.7%). The unemployment rate for women fell from 6.2% in 2015 to 2.8% in 2018 (EU 28 average in 2018: 7.2%). Youth unemployment (15 to 24-year-olds) decreased from 12.6% in 2015 to 6.7% in 2018 (EU 28 average in 2018: 15.2%). Long-term unemployment (12 months or more as a percentage of overall unemployment for persons aged 15 to 64 years) fell from 47.4% in 2015 to 30.6% in 2018 (EU 28 average in 2018: 43.4%).

The proportion of 15 to 24-year-olds "outside the system" (not in employment, education or training, i.e. NEET) fell from 7.5% in 2015 to 5.6% in 2018 (as a percentage of the 15 to 24-year-old age group), which is below the EU 28 average (10.5% in 2018).

The Committee takes note of the performance of the labour market in the Czech Republic, as compared with other States Parties. It notes in particular that in 2018, the overall unemployment rate was the lowest in the 28 EU member States. In addition, the overall employment rate was among the highest in those countries, and was increasing. However, youth employment was still below the EU 28 average, and the gap between the employment rates of men and women was still wide (approximately 14 percentage points) in 2018.

Employment policy

In its report, the Government states that labour market measures implemented to support groups or communities with distinct levels of under-employment or unemployment are governed by the Law on Employment. The measures include contributions paid to employers who hire jobseekers or establish new jobs (contributions towards salaries, etc.), support for

jobseekers setting up their own business, funding for training courses and contributions towards the operational costs of hiring persons with disabilities (see Articles 104 *et seq.* of Law No. 435/2004 on Employment).

Through these active employment policy measures, the Labour Office targets the most disadvantaged persons on the labour market, i.e. graduates with no work experience, persons under 30 years of age or over 50, persons who have custody of a child, persons with disabilities, persons at risk of social exclusion and the long-term unemployed. The Government points out that migrants have full access to the services provided by the Labour Office (Czech language lessons, vocational training, individual assistance with administrative procedures, etc.) as soon as they meet the requirements of the Law on Employment (e.g. access to the labour market for asylum seekers six months after the date on which they filed an application for international protection, and unlimited access for persons with international protection status).

The Government does not provide any information on labour market measures specifically designed to support women. On this point, the Committee notes that according to the European Commission, participation by women in the labour market decreases after they have given birth. In the Czech Republic, in 2017, the employment gap between women with a child under the age of six and women without children was the widest in the EU, i.e. 48.3 percentage points (Commission staff working document, The Czech Republic Country Report 2019, SWD(2019) 1002 final, 27 February 2019). The Committee requests that the next report provide information on the labour market measures specifically implemented to support women (particularly women taking care of young children) and young people.

According to European Commission data, public expenditure on labour market policies (as a percentage of GDP) decreased from 0.61% in 2015 to 0.54% in 2016 and 0.47% in 2017 (of which approximately 0.2% was for active measures in 2017).

The statistical data provided by the Government show that, in 2018, of approximately 121,600 unemployed persons and 241,900 jobseekers, a little more than 45,600 benefited from active employment policy measures. Most of these were workers over 50 years of age (approximately 15,000) and long-term jobseekers (approximately 12,800). However, the Government does not provide complete information on the number of beneficiaries according to the different types of measures. Consequently, the Committee reiterates its request in this respect.

Lastly, the Committee recalls that labour market measures should be targeted, effective and regularly monitored. As the Government has not provided any information on this subject, the Committee asks whether labour market policies are monitored and how their effectiveness is assessed.

Conclusion

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

Article 1 - Right to work

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

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

1. Prohibition of discrimination in employment

Article 1§2 of the Charter prohibits all forms of discrimination in employment. The Committee asked the States Parties to submit up-to-date information for this reporting cycle on the legislation prohibiting all forms of discrimination in employment, in particular on grounds of gender (had Article 1 of the Additional Protocol not been accepted), race, ethnic background, sexual orientation, religion, age, political opinions or disability (had Article 15§2 not been accepted), together with information on the available remedies. It also asked for information on any specific measures taken to combat discrimination in employment against migrants and refugees.

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

The Czech Republic has accepted Article 15§2 of the 1961 Charter and Article 1 of the Additional Protocol and therefore it was under no obligation to report on prohibition of discrimination on grounds of gender and disability, which will be examined by the Committee under these provisions.

The Committee has assessed the legislation prohibiting discrimination in general terms in its previous conclusions and found the legal framework to be in conformity with the 1961 Charter (see Conclusions XX-1 (2012)). The report does not provide any new information in this respect. The Committee notes from the country report of 2019 on the Czech Republic of the European network of legal experts in gender equality and non-discrimination (European Equality Law Network) that the 2009 Anti-discrimination Act was amended in 2018 to contain a reference to EU Regulation no. 492/2011 meaning that, in situations relating to the free movement of workers, EU citizenship will also be deemed a discrimination ground. In the light of the information in its possession, the Committee renews its positive conclusion. It requests, however, that the next report provide a comprehensive up-to-date description of the relevant legal framework in force.

Similarly, the report does not reply to the Committee's request for information on legislation specifically targeted at combating discrimination on grounds of race, ethnic background, sexual orientation, age, political opinion or religion. The Committee notes that it addressed the legislation and the situation in practice relating to these issues and found it to be in conformity with the requirements of the Charter (see in particular, Conclusions XX-1 (2012), Conclusions XIX-1 (2008) and Conclusions XIII-1 (2006)). Considering the fact that the latest comprehensive assessment of many of these aspects dates back to more than 10 years, it renews its request and asks that the next report provide a full and up-to-date description of the situation. Furthermore, the Committee has not yet had an opportunity to comprehensively assess the measures taken to combat discrimination in employment against migrants and refugees and, similarly, recalls its request in this respect.

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 these aspects to be provided for this examination cycle.

The Committee has comprehensively addressed various aspects of the remedies available for victims of discrimination in its previous conclusions and found them to be in conformity with the 1961 Charter (see Conclusions XX-1 (2012), Conclusions XIX-1 (2008)). The report does not address this issue. The Committee notes in this respect that the UN Committee on the Elimination of Racial Discrimination in its concluding observations on the 2019 periodic report of the Czech Republic raised concerns that the Office of the Public Defender of Rights cannot represent victims of racial discrimination in court. The Committee asks that the next report comment on this observation. Given the importance of the aspect of remedies in cases of alleged discrimination, it also requests a full and up-to-date description of the situation in this regard, which should include information on the procedures available, burden of proof, penalties, level of compensation, as well as statistics on the number of discrimination cases lodged and won before various courts and/or equality bodies.

Pending receipt of the information requested, the Committee concludes that the situation with respect to prohibition of discrimination in employment is in conformity with the Charter.

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,* par. 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 work and the "gig economy" or "platform economy".

The Committee notes that the national authorities have not replied to any of the specific, targeted questions for this provision on exploitation of vulnerability, forced labour and modern slavery (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 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 Court 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.

The Committee notes from GRETA that in 2009, the offence of trafficking in human beings was included in Section 168 of the new Criminal Code (Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Czech Republic, first evaluation round, GRETA (2020)01, 11 February 2020). The list of forms of exploitation includes slavery, servitude, forced labour or other forms of exploitation; profiting from such conduct is also criminalised. Forced labour is not criminalised separately, but has been interpreted by the Supreme Court within the meaning of Article 2(1) of the ILO Convention No.29. In 2010, the offence of "unauthorised employment of foreigners" was included in Article 342 of the Criminal Code, which refers to "particularly exploitative working conditions". In 2018, the Ministry of the Interior, together with other bodies, issued a "common position on the interpretation of terms related to labour exploitation". It analyses the difficulties in interpreting the concept of "labour exploitation", which is not legally defined, but can be subsumed under "slavery", "servitude", "forced labour" and "other forms of exploitation", as well as under "particularly exploitative working conditions" (Article 342 Criminal Code). In an annex to the position, there is a detailed list of indicators of human trafficking for labour exploitation.

The Committee further notes that GRETA was informed that there had been a total of eight convictions for trafficking in human beings for the purpose of labour exploitation since 2010 and that the majority of the cases concerned the exploitation of Czech citizens in the United Kingdom. The Committee also notes from GRETA that on 16 December 2015 the Constitutional Court delivered a judgment in a case concerning the alleged labour exploitation of hundreds of migrant workers brought to the Czech Republic through false promises and exploited in the forestry industry in the period 2009-2010 (the so-called "Tree Workers Case"). Following a constitutional complaint by 14 of the migrant workers concerned (from the Slovak

Republic and Romania), the Constitutional Court found that that the police had acted unlawfully and annulled the latter's decisions to suspend the criminal proceedings.

The Committee asks that the next report provide information on the application of Section 168 of the Criminal Law in practice, particularly with regard to labour exploitation in the forms of forced labour, slavery and servitude, as well as of Article 342 of the Criminal Code. The report should provide information (including figures, examples of case law and specific penalties effectively applied) on the prosecution and conviction of exploiters during the next reference period, in order to assess in particular how the national legislation is interpreted and applied. In addition, the Committee wishes to be informed of the developments in the "Tree Workers Case", in particular on whether the police investigation has been reopened and, in that case, if it has led to specific prosecutions or convictions.

Prevention

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

The Committee notes from the abovementioned GRETA Report that the Czech Government adopted the National Strategy for Combating Trafficking in Human Beings for the period 2016-2019, which provides a co-ordination frame for the state bodies concerning prevention as well as repression of trafficking in human beings. The Committee requests to be informed in the next report on the implementation of the 2016-2019 National Strategy and any subsequent national strategy regarding specific measures aimed at preventing human trafficking for the purpose of labour exploitation (e.g., awareness-raising activities, data collection, training, identification of victims) and the results achieved in this field.

The Committee further notes from the GRETA Report that the State Labour Inspection Office (SLIO) monitors employment and remuneration conditions, carries out regular and unscheduled inspections and helps to detect possible cases of trafficking in human beings, although it does not have a specific mandate to identify victims. GRETA expressed concerns about the current identification system of victims, which risks leaving out those who are unable or unwilling to cooperate with the authorities in a criminal investigation. GRETA therefore urged the Czech authorities to take steps to improve the identification of victims of trafficking in human beings, and in particular to put in place a formalised victim identification procedure, disconnect the identification of victims from the initiation of criminal proceedings and strengthen the proactive identification of victims of trafficking for the purpose of labour exploitation. In the light of GRETA's concerns and recommendations, the Committee asks that the next report provide information on the specific steps taken to reinforce the capacity of labour inspectors to prevent and effectively detect forced labour and labour exploitation, particularly in economic sectors such as agriculture, construction, hospitality, tourism and manufacturing.

No information has been provided in the report on whether Czech 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. The Committee accordingly reiterates its request on this point.

Protection of victims and access to remedies, including compensation

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

The Committee notes from the abovementioned GRETA Report that assistance to adult victims of trafficking in human beings is provided within the Programme for Support and Protection of Victims of Trafficking in Human Beings, which is funded by the Ministry of Interior and delivered by the NGO La Strada. It further notes the concern of the UN Committee on the Elimination of Racial Discrimination about the very low proportion of victims of trafficking included in that programme, while noting that a large majority of victims of trafficking are foreigners (Concluding observations, 19 September 2019, outside the reference period, par. 29). The Committee therefore asks for information in the next report on the number of identified victims of forced labour and labour exploitation and the number of such victims benefiting from protection and assistance measures provided within the framework of the abovementioned programme. It also asks for general information on the type of assistance provided (e.g., protection against retaliation, safe housing, health care, material support, social and economic assistance, legal aid, translation and interpretation, voluntary return, provision of residence permits for migrants) and on the duration of such assistance. In this regard, the Committee notes that GRETA has expressed concerns about the fact that the availability of assistance beyond the initial 60 days' reflection is linked to the victim's co-operation with law enforcement authorities and the outcome of the investigation (see also the recommendation on this point by the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, following her official visit to the Czech Republic, 26-27 November 2015 and 21 January 2016, p.12).

The Committee notes from the abovementioned GRETA Report that while there have been some successful compensation claims for non-material damages in cases of trafficking in human beings for sexual exploitation, there have been none concerning trafficking for labour exploitation. In this connection, the Committee asks for confirmation in the next report that the existing legal framework provides the victims of forced labour and labour exploitation, including irregular migrants, with access to effective remedies (before criminal, civil or labour courts or other mechanisms) designed to provide compensation for all damage incurred, including lost wages and unpaid social security contributions. The Committee also asks for statistics on the number of victims awarded compensation and examples of the sums awarded. In this context, the Committee refers to the 2014 Protocol to the 1930 ILO Forced Labour Convention (ratified by the Czech Republic on 9 June 2016), which requires Parties to provide access to appropriate and effective remedies to victims, such as compensation, irrespective of their presence or legal status in the national territory.

Domestic work

The Committee reiterates that domestic work may give rise to forced labour and exploitation. Such work often involves abusive, degrading and inhuman living and working conditions for the domestic workers concerned (see Conclusions XX-1 (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 XIX-1 (2008), General Introduction, General Question). The Committee recalls that under Article 3§2 of the 1961 Charter, inspectors must be authorised to inspect all workplaces, including residential premises, in all sectors of activity (Conclusions XVI-2 (2003), Czech Republic; Statement of Interpretation of Article 3§3 (i.e., Article 3§2 of the 1961 Charter)). It considers that such inspections must be clearly provided for by law and sufficient safeguards must be put in place to prevent risks of unlawful interferences with the right to respect for private life.

In the absence of any reply to the targeted questions or to the question raised in its previous conclusion (Conclusions XX-1 (2012) with regard to domestic work) the Committee notes from

the abovementioned GRETA Report that there is a lack of reliable data about the situation of domestic workers, this economic sector being relatively informal. GRETA noted in this connection that domestic work is outside the scope of labour inspectors' mandates, and inspections do not take place in private households. It therefore considered that the Czech authorities should take steps to review the regulatory systems concerning migrant domestic and home care workers, and ensure that inspections can take place in private households with a view to preventing abuse of domestic workers.

The Committee asks that the next report indicate whether any measures have been taken to ensure that labour inspectors can carry out inspections in private households with regard to domestic work or alternatively explain how domestic workers are protected from labour exploitation and abuse, including in terms of detection of exploitation and access to remedies.

"Gig economy" or "platform economy" workers

The Committee notes that the report does not reply to its request for information on the measures taken to protect workers from exploitation in the "gig economy" or "platform economy".

The Committee therefore repeats its request and asks for information in the next report on whether workers in the "platform economy" or "gig economy" are generally regarded as employees or self-employed workers. It also asks whether the powers of the competent labour inspection services include the prevention of exploitation and unfair working conditions in this particular sector (and if so, how many inspections have been carried out) and whether workers in this sector have access to remedies, particularly to challenge their status and/or unfair practices.

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. If the information requested does not appear in the next report, nothing will allow to show that the situation is in conformity with Article 1§2 on this point.

Conclusion

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

Article 1 - Right to work

Paragraph 3 - Free placement services

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

Article 1§3 provides for the right to free employment services. In its previous conclusion (Conclusions XX-1 (2012)), the Committee concluded that the situation was not in conformity with the requirements of this provision, on the ground that it had not been established that employment services did operate in an efficient manner. In particular, the Committee observed that the report merely provided information on private employment agencies and failed to address the public employment services (PES), which are the main thrust of this provision.

It requested following information to be provided for the different years of the reference period:

- the number of vacancies notified to the PES;
- the number of placements made by the PES (and the placement rate, measured as a percentage of the total vacancies notified);
- the placements made by the PES as a percentage of total hirings in the labour market.

  The Committee also renewed its request for information on the number of counsellors in the PES involved in placement services and on the ratio of placement staff to registered jobseekers.

  Finally, the Committee invited the Government to comment on the observations of the European Commission that the capacity of the public employment service should be strengthened to increase the quality and effectiveness of training, job search assistance and individualised services.

In reply, the report provides that the unemployment rate in the Czech Republic is the lowest one within the EU and the number of jobseekers was steadily dropping in the reference period (197,289 in 2019). The placement rates ranged from 21.3% (2015) to 15.6% (2018) by the Employment Service, combined with additional 56.2% (2015) to 47.6% (2018) placements “in other manner”, such as advisory, signposting to a suitable employment, re-skilling or up-skilling as part of a growth and development pathway, re-training organised by the Ministry of Labour and Social Affairs.

The report further provides statistics indicating that despite the decrease of the total number of jobseekers during the years of the reference period, the number of participants of advisory activities raised (in particular in 2018). The Committee renews its specific request for information on the exact number of counsellors in the PES involved in placement services, so that the ratio of placement staff to registered jobseekers could be discernible.

The report further states that PES provide its services not only to jobseekers but also to employers, such as interviewing applicants, regular monitoring including active search of vacant posts, cooperation with local authorities and other relevant institutions via guidance, counselling and legal advice, etc. It refers to two current programs launched by the PES: “Competence 4.0” aimed at supporting cooperation between companies and schools, and “Supporting vocational training of employees” to enhance participation of disadvantaged groups in life-long learning. The Committee understands that the programmes are pending and shall last beyond the reference period. It asks the next report to provide information on any developments, in particular on the outcomes and impact of these programmes.

Conclusion

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

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

Paragraph 2 - Employment of persons with disabilities

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

The Committee notes that the present report was 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 previous conclusion was deferred (Conclusions 2012).

Legal framework

The Committee recalls from previous conclusions that the Act on Equal Treatment and Legal Protection against Discrimination 2009 and the Labour Code provide protection against discrimination inter alia on grounds of disability and includes an obligation on employers to make reasonable accommodation (Conclusions 2012,). Further the Employment Act (Act No 434/2004 Coll.) requires employers with more than 25 employees to ensure that 4% of their employees are persons with disabilities.

The Committees asks the next report to provide information on the definition of disability.

Access of persons with disabilities to employment

According to the report the situation of employment of persons with disabilities improved in the Czech Republic in recent years due to positive economic climate and due to the measures adopted in this field. It is estimated that 123,5 000 persons with disabilities are employed in the Czech Republic. The number of jobseekers with disabilities dropped by nearly 25 000 persons from 2015, i.e. by almost 44% from 57,030 in 2015 to 32,464 in 2019.

The report also states that the number of persons with disabilities in sheltered employment increased during the same period of time by four thousand persons, from 51, 877 to 55,661 in 2019. However, it states that the figures indicate that most of persons with disabilities move from unemployment to the open labour market.

The Committee notes from the ANED report (Academic Network of European Disability Experts) on the European Semester (published in 2019, but concerning data from 2016-2017 or earlier) that the employment rate for persons with disabilities (43.99%) is lower that the EU average (48.1%) and the unemployment rate higher (25.0% in the Czech Republic compared with and Eu average of 19.66%).

The Committee notes, in this respect that the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations on the initial report of the Czech Republic (CRPD/C/CZE/Co/1, May 2015) expressed concern about the high unemployment rate of persons with disabilities. Furthermore, the UN Committee noted that close to one third of employed persons with disabilities work outside the open labour market. The Committee asks for the Governments comments on this.

The Committee asks that the next report provide up-to-date figures relating to the reference period, on the total number of persons with disabilities of working age, specifying how many of them are active and in work (in the public and private sector, and in the open labour market or in sheltered employment) and how many are unemployed. 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 promote and support the employment of persons with disabilities

According to the report since 2017, a number of measures have been adopted to support employment of persons with disabilities. For example, the programme “The Development of systems to support employment of persons with disabilities” financed by the European Social Fund from June 6, 2017. The programme is implemented by the Labour Office and its goal is to increase employment of persons with disabilities, especially on the open labour market, and to increase the capacity, diversity and quality of services provided by public institutions. The Labour Office hired 99 new employees specifically to pursue activities exclusively related to employment of persons with disabilities on the open labour market.

The report states that since 2017 the percentage of employers complying with the quota system (see above) by employing persons with disabilities has increased, as opposed to fulfil their obligations in this respect through the payment of a contribution or through purchasing goods and services from sheltered employment enterprises of self-employed persons with disabilities.

The Committee asks the next report to provide updated information on measures to promote and support the employment of persons with disabilities and the number of persons benefiting from them.

The Committee previously noted from outside source that employers were obliged to ensure reasonable accommodation at their own cost, and asked the Government to confirm whether this was indeed the case and requested the next report to provide information on the implementation of the reasonable accommodation obligation in practice, in particular how many employers fulfil the obligation (Conclusions 2012). The report provides information on Section 78a of the Employment Act which allows for contributions to support the employment of persons with disabilities in a sheltered work position. Contributions cover the costs of the adaptation of the establishment, such as the purchase of computer software, the adaptation and purchase of ancillary technological equipment, the purchase of communication and orientation aids, the adaptation of hygienic, thermal, light or noise conditions. Further it states that the Labour Office may award an employer who employs more than 50% persons with disabilities similar reimbursements.

The Committee seeks clarification as to whether only employers employing persons with disabilities in a sheltered work position or employing more than 50% persons with disabilities are entitled to the reimbursement of their costs for reasonable accommodation.

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

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

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

Paragraph 4 - Right of nationals to leave the country

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

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

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

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 notes that Article 110 of the Labour Code provides that all employees are entitled to receive equal pay for the same work or for work of equal value. According to the report, the same work or work of equal value is defined as work of the same or comparable complexity, responsibility and strenuousness. The work is performed under the same or comparable working conditions, involves equal or comparable work efficiency and produces equal or comparable work results. Under Article 16 of the Labour Code, employers have a duty to ensure equal treatment of all employees with regard to working conditions and remuneration, and any form of discrimination is prohibited.

The Committee refers to its decision on the merits of 5 December 2019 (University Women of Europe (UWE) v. the Czech Republic, Complaint No. 128/2016, §146) in which it noted that Article 5§1 of the Anti-Discrimination Act further defines the concept of equal pay, using the term remuneration, which "shall mean any performance, whether monetary or non-monetary, recurring or one-off, which is directly or indirectly provided to a person in paid employment".

The Committee considers that the obligation to recognise the right to equal pay has been respected.

Effective remedies

The Committee recalls that domestic law must provide for appropriate and effective remedies in the event of alleged pay discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court. Effective access to courts must be guaranteed for victims of pay discrimination. Therefore, proceedings should be affordable and timely. Anyone who suffers pay discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and to act as a deterrent. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and from being sufficiently dissuasive is contrary to the Charter. The burden of proof must be shifted. The shift in the burden of proof consists in ensuring that where a person believes she or he has suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of non-discrimination (Conclusions XIII-5, Statement of interpretation on Article 1 of the 1988 Additional Protocol). Retaliatory dismissal in cases of pay discrimination must be forbidden. Where a worker is dismissed on grounds of having made a claim for equal pay, the worker should be able to file a complaint for dismissal without valid reason. In this case, the employer must reinstate her/him in the same or a similar post. If reinstatement is not possible, the employer must pay compensation, which must be sufficient to compensate the worker (i.e. cover pecuniary and non-pecuniary damage) and to deter the employer (see in this respect collective complaints Nos. 124 to 138, University Women of Europe (UWE) v. Belgium,

Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, 5-6 December 2019).

The report contains no information on the effective remedies available to employees who suffer pay discrimination.

In this connection, the Committee refers to its decision on the merits of 5 December 2019 (University Women of Europe (UWE) v. Czech Republic, Complaint No. 128/2016, §§154-155) in which it noted that the Anti-Discrimination Act provides for a shift in the burden of proof and that victims of discrimination can claim compensation both for pecuniary and for non-pecuniary damage, for which the legislation sets no ceiling (Article 10). Moreover, the Labour Code (Article 346b§4) prohibits any retaliatory action against a worker for having asserted his or her rights. The Committee asks whether the obligation to compensate the difference of pay is limited in time or is awarded for entire period of unequal pay

The Committee requests that the next report contain information on the national case law which exists in the event of a violation of the principle of equal pay. It also asks whether sanctions are imposed on employers in the event of gender pay discrimination in employment and 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 (see in this respect Complaints Nos.124 to 138, UWE, *op. cit*.).

With regard to *pay transparency*, the Committee notes from the report of the European Network of Legal Experts in Gender Equality and non-Discrimination (2018) that national (case) law does not address wage transparency in any way, and that none of the necessary measures has as yet been taken to ensure the application of the European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, particularly through the requirement that employers regularly provide reports on remuneration with gender-disaggregated data.

Regarding the availability of *information on pay levels*, the report indicates that data concerning remuneration are regarded as personal data in the Czech Republic and, as such, are protected against unauthorised disclosure by the constitutional protection provided for in Article 10 of the Charter of Fundamental Rights and Freedoms. Employers therefore are not entitled to publish pay data for individual workers, except when obliged to provide data for statistical purposes.

The Committee 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 Nos. 124 to 138, UWE, op. cit.).

In its previous conclusion (Conclusions XX-1 (2012)), the Committee observed that the situation was not in conformity with Article 1 of the 1988 Additional Protocol of the 1961 Charter, on the ground that legislation only permitted pay comparisons between employees working for the same company or undertaking. It also reiterates that in its previous conclusions with respect to Article 4§3 (Conclusions XX-1 (2012) and XX-3 (2014)) it noted that in equal pay disputes, legislation only permitted pay comparisons between employees working for the same company or undertaking.

The report states that it is not possible to enforce the principle of equal remuneration in practice, for several reasons. The Committee refers to its conclusion on Article 4§3 (Conclusions XX-3 (2014)) as concerns these reasons. It notes that the report requests clarification on the meaning and the enforcement of the principle of pay comparison. In this respect, the Committee refers to its decision on the merits of 5 December 2019 (University Women of Europe (UWE) v. the Czech Republic, Complaint No. 128/2016, §§157-171). The Committee asks whether it is possible to make pay comparisons across companies in equal pay litigation cases. In order to clarify this issue, the Committee considers that provision should be made for the right to challenge unequal remuneration resulting from legal regulation and collective agreements. In addition, there also should be the possibility to challenge unequal remuneration resulting from internal pay system within a company or a holding company, if remuneration is set centrally for several companies belonging to such holding company.

In view of the above, the Committee defers its findings on this point.

Enforcement

Regarding the Labour Inspectorate, the report indicates that monitoring of compliance with the measures aimed at promoting equality and non-discrimination is carried out by the State Labour Inspection Office and its Regional Inspectorates (SLIO). In 2018, the Labour Inspectorate recorded 45 violations of Article 110 of the Labour Code (equal pay).

With regard to the role of equality bodies to ensure the enforcement of the principle of equal pay, the Committee refers to its decision on the merits of 5 December 2019 (University Women of Europe (UWE) v. Czech Republic, Complaint No. 128/2016, §§176-180).

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

Obligations to promote the right to equal pay

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

The Committee notes from Eurostat data that the gender pay gap was 22.5% in 2015, 21.5% in 2016, 21.1% in 2017 and 20.1% in 2018 (compared to 26.2% in 2008 and 21.6% in 2010).

It notes that this gap was higher than the average of the 28 European Union countries, i.e. 15% in 2018 (data as of 29 October 2020).

The Committee notes that the wage gap decreased by 2.4% during the reference period and is declining steadily, albeit at a very slow pace. However, in relative terms, it is high as it is above the EU average. In the light of the above, the Committee considers that the situation is not in conformity with Article 20 of the Charter on the ground that the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

The Committee asks for the next report to provide updated information on the specific measures and activities implemented to promote gender equality, overcome gender segregation in the labour market and reduce the gender pay gap, together with information on the results achieved. It also asks that the next report provide information on the employment rate for both men and women and the gender wage gap for each year in the reference period.

Conclusion

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 1 of the Additional Protocol of 1988 to the 1961 Charter on the ground that the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.