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European Committee of Social Rights

Conclusions XXII-1 (2020)

GERMANY

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 Germany, which ratified the 1961 European Social Charter on 27 January 1965. The deadline for submitting the 37th report was 31 December 2019 and Germany submitted it on 14 February 2020.

The Committee recalls that Germany 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 XXI-1 (2016)).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions XXI-1 (2016)) found the situation to be in conformity, there was no examination of the situation in 2020.

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

- the right to work (Article 1);
- the right to vocational guidance (Article 9);
- the right to vocational training (Article 10);
- the right of 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).

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

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

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

- 5 conclusions of conformity: Articles 1§1, 10§1, 10§3, 15§1 and 15§2.
- 1 conclusion of non-conformity: Article 18§1.

In respect of the other 4 situations related to Articles 1§2, 1§4, 9 and 18§3, the Committee needs further information in order to examine the situation.

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

The next report from Germany 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 Germany.

Employment situation

According to Eurostat, the GDP growth rate rose from 1.5% in 2015 to 2.2% in 2016 and 2.6% in 2017 before falling to 1.3% in 2018, a rate which is below 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 74% in 2015 to 75.9% in 2018, exceeding the EU 28 average (68.6% in 2018).

The employment rate for men increased from 78% in 2015 to 79.7% in 2018, which is higher than the EU 28 average (73.8% in 2018). The employment rate for women rose from 69.9% in 2015 to 72.1% in 2018, exceeding the EU 28 average (63.3% in 2018). The employment rate for older workers (55 to 64-year-olds) increased from 66.2% in 2015 to 71.4% in 2018, which is well above the EU 28 average (58.7% in 2018). Youth employment (15 to 24-year-olds) increased from 45.3% in 2015 to 47.2% in 2018, which is also well above the EU 28 average (35.3% in 2018).

The overall unemployment rate (persons aged 15 to 64 years) decreased from 4.7% in 2015 to 3.5% in 2018, which is well below the EU 28 average (7% in 2018).

The unemployment rate for men decreased from 5.1% in 2015 to 3.9% in 2018, which is below the EU 28 average (6.7% in 2018). The unemployment rate for women dropped from 4.3% in 2015 to 3% in 2018, which is far below the EU 28 average (7.2% in 2018). Youth unemployment (15 to 24-year-olds) decreased from 7.2% in 2015 to 6.2% in 2018, which is also very much lower 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 44% in 2015 to 41.3% in 2018, which is 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) dropped from 6.2% in 2015 to 5.9% in 2018 (as a percentage of the 15 to 24 year-old age group), which is well below the EU 28 average (10.5% in 2018).

The Committee notes the favourable trends in the labour market (an increase in the employment rate and falling unemployment) which occurred despite the economic slowdown at the end of the reference period.

Employment policy

In its report, the Government sets out the active labour market policy measures implemented during the reference period for workers in general and certain target groups including women, young people, the long-term unemployed, low-skilled workers, migrants and refugees.

The Committee notes the measures taken with a view to increasing female labour market participation (e.g. legislative amendments improving parental benefits and introducing a legal right to family care leave which came into force in January 2015), reducing the proportion of women in marginal or part-time employment (e.g. the *Perspektive Wiedereinstieg*, Back-to-Work Prospects programme which aims for a return to working life in line with one’s skills and qualifications and as close to full-time as possible) and reducing the gender pay gap (e.g. the Law on pay transparency which came into force in July 2017, tools like the *Logib-D* wage equality checker).

The Committee further notes the measures to support young people, for example vocational guidance and counselling services (which are also provided in general education schools in the last two to three years before the end of compulsory schooling), vocational training

courses, assisted training, wage and start-up subsidies and integration support benefits. Thanks to a programme designed to help young people between 12 and 26 years of age with special needs for assistance in integrating into school, training, work and society (*Jugend stärken im Quartier*, Supporting Youth in the Neighbourhood), 175 projects were implemented nationwide between 2015 and 2018 reaching nearly 57,000 young participants, of whom around 59% subsequently started (or restarted) school or vocational training. Another initiative launched in August 2016 (*Zukunftsstarter*, Future Starters) is aimed primarily at recruiting young adults without vocational qualifications into vocational training; by the end of 2018, around 30,000 young jobseekers receiving basic income support had benefitted from this project.

As regards the long-term unemployed, the Committee notes the importance placed on their training. In this context, legislation to strengthen continuing education and training, which aims, *inter alia*, to improve access to continuing vocational training for low-skilled workers, the long-term unemployed and older workers, entered into force in August 2016. In addition, a holistic concept (called *MitArbeit*, Participation Through Work) was developed in 2017 with the specific aim of reducing the number of long-term unemployed by increasing their employability through individual counselling, intensive support and the provision of more job opportunities. The most important element of this concept is the Law on the creation of new participation opportunities in the general and social labour market [which came into force in January 2019, i.e. outside the reference period].

Lastly, the Committee notes that the activation rate increased from 17.6% in 2015 to 21% in 2018, according to the Government's report.

According to European Commission data, public expenditure on labour market policies (as a percentage of GDP) remained relatively stable: 1.51% in 2015 and 1.41% in 2017 (of which 0.28% was for active measures in 2015 compared to 0.27% in 2018).

Conclusion

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

Article 1 - Right to work

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

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

1. Prohibition of discrimination in employment

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.

Germany has accepted Article 15§2 of the 1961 Charter. Therefore it was under no obligation to report on the prohibition of discrimination on grounds of disability, which will be examined by the Committee under this provision.

As regards the legislation prohibiting discrimination in general terms, the Committee recalls it examined the legal framework in its previous conclusions (Conclusions XXI-1 (2016) and Conclusions XX-1 (2012)). The report states that there have been no legislative amendments in the reference period. It recalls that the General Equal Treatment Act prohibits discrimination based on race or ethnic origin, religion or belief, sex, disability, age or sexual identity. The Committee notes that in its 2019 country report on Germany the European network of legal experts in gender equality and non-discrimination (Equality Network) concluded that there are disturbing gaps in the formal legislative implementation that have been only very partially closed by case law, including: the exclusion of dismissals from the scope of application of the General Equal Treatment Act; the lack of a right to return after parental leave or the restriction of legal protection to so-called 'mass contracts' regarding the provision of goods and services. Further, according to the Equality Network's report, there are detrimental misconceptions in the formal legislative implementation, such as the requirement of the employer's fault or the vast possibilities of justification by collective agreements ignorant of the question whether they contain discriminatory job classification systems or not. The Committee asks that the next report provide a comprehensive and up-to-date description of the legal framework prohibiting discrimination, while replying to the observations referred to above.

The report provides extensive information on prohibition of discrimination on grounds of gender. In this respect, the Committee also refers to the data provided under Article 1§1 of the 1961 Charter, in particular on programs and projects aimed at improving equality of participation for women and men on the labour market and ensuring equal career opportunities. The report describes targeted measures, including legislative ones, to strike a balance between family, care and work responsibilities and to ensure more equitable pay (such as the 2017 Act to Promote Transparency of Remuneration Structures between men and women, amendments to the Act on Equality between Women and Men in the Federal Administration and in Federal Enterprises and Courts, and the 2017 Act on the Participation of the Federation in Appointments to Bodies).

The Committee notes the positive developments and the efforts to eliminate discrimination against women and to promote gender equality in employment. It also notes, however, that the UN Committee on the Elimination of Discrimination against Women in its 2017 periodic assessment raised concerns about the limited scope of the General Act on Equal Treatment which fails to comprehensively protect women from gender-based discrimination (see

concluding observations (2017) CEDAW/C/DEU/CO/7-8). It further pointed out that the period during which discrimination claims can be made remains extremely limited and that group action enabling women's organizations and trade unions to bring cases of discrimination before the courts is not provided for through the Act. The Committee asks that the next report comment on these observations, reserving, meanwhile, its position on this point.

Apart from questions on the legal framework, during this examination cycle, the Committee assesses specific, targeted legislation and practical measures focused specifically on discrimination on grounds of ethnic origin, race, age, sexual orientation, political opinion or religion. The report does not reply to the Committee's request. The Committee recalls that it has already specifically asked for information on positive action or measures taken to combat all forms of discrimination in employment in its previous conclusion (Conclusions XXI-1 (2016)). While renewing its request, the Committee underlines that, should the next report not provide the relevant and exhaustive information, nothing will allow to show that the situation is in conformity with the Charter on these aspects.

In this respect, the Committee notes that the UN Committee on the Elimination of Discrimination against Women in its abovementioned 2017 concluding observations, expressed concern about Article 9 of the Equality Act, which, in its opinion, provided for questionable differential treatment on grounds of religion or beliefs. Also, as regards the prohibition of discrimination on grounds of race or ethnic background, the Committee notes that several UN bodies voiced concern in the reference period about persistent discrimination of Sinti, Roma, people of African descent and other minorities, such as Muslims, in particular with regard to gaining access to work opportunities (see CERD/C/DEU/CO/2015, A/HRC/36/60/Add.2, 2017, and A/HRC/WG.6/30/DEU/2, 2018). In particular, the UN Committee on the Elimination of Racial Discrimination, in its concluding observations on the 2015 periodic report of Germany, raised concerns that the absence of a statutory definition of racial discrimination has direct implications on the State party's failure to adequately address racial discrimination. It also pointed at reports of the ethno-religious discrimination of Muslim women in gaining access to work opportunities. The Committee understands that there were no amendments to the relevant legal framework in the reference period and asks that the next report specify whether any measures in this respect have been adopted or envisaged.

In the appendix to the report, under article 1§1, information was provided on measures taken to combat discrimination in employment against migrants and refugees. In particular, the new 2019 Act to promote the employment of foreigners provided for placement support services necessary for early integration of asylum seekers into the labour market. The annex also describes a broad project aimed at integrating female refugees into the labour market. The Committee notes that these developments took place outside the reference period and, accordingly, will assess them comprehensively during its next supervision cycle. It further notes that several sources report that the situation of persons with a migrant background has improved but still remains difficult. The Committee refers in this respect to the ECRI report on Germany of 2020, United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) 2017 report, and ILO Observation (CEACR) – adopted 2018, published at the 108th ILC session (2019) on Discrimination (Employment and Occupation) Convention. The Committee notes at the same time that ILO refers to a series of reforms on migration-related issues adopted in 2019 (including the Law on the removal of the time limit from the Integration Act; the Law on tolerated stay in case of training or employment; and the Law on the promotion of the training and employment of foreign nationals). It also notes that the Federal Government is aiming to make it easier for mothers with a migrant background to get into work and to improve access to existing labour market integration services. The Committee asks for exhaustive information on this aspect and reserves its position on this matter at this stage.

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 made the request that information on these aspects be provided

The report does not address these issues. The Committee examined the situation in this respect in 2012 (see Conclusions XX-1) and asked for further information on enforcement and remedies. Since the information provided in reply was still insufficient in its previous conclusion (Conclusions XXI-1 (2016)), the Committee requested data on cases of employment discrimination that had been dealt with by courts and other competent bodies, and for specific information on their nature, outcome and the compensation paid to the employees concerned. The report states that the Federal Government has no statistical data on the application of the General Equal Treatment Act. The Committee asks whether any statistics on the number of discrimination cases is collected. It notes various concerns raised by other sources, such as the abovementioned ECRI report of 2020, which highlighted that the scope of the mandate of the Federal Anti-Discrimination Agency (FADA) is too narrow: it lacks fundamental victim support and litigation competences, is not fully independent and is underfunded. There are no independent equality bodies in the Länder. Also the UN points to the limited mandate of the FADA which continues to lack sufficient authority to file or support court cases, launch investigations or impose sanctions in response to discrimination claims (see Committee on the Elimination of Discrimination against Women, Concluding observations 2017, referred to above).

The Committee again strongly invites the authorities to provide a full and up-to-date description of the situation in law and practice in respect of remedies in cases of alleged discrimination, which should include essential information on the procedures available, the burden of proof, penalties, the level of compensation, as well as statistics on the number of discrimination cases lodged and won before various courts and/or equality bodies or, in lack of thereof, to explain what data are used to assess the situation. Meanwhile, the Committee reserves its position on these points.

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

2. Forced labour and labour exploitation

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

Referring to the Court's judgment of *Siliadin v. France*, the Committee has in the past drawn the States' attention to the problem raised by forced labour and exploitation in the domestic environment and the working conditions of the domestic workers (Conclusions 2008, General Introduction, General Questions on Article 1§2; Conclusions 2012, General Introduction, General Questions on Article 1§2). It considers that States Parties should adopt legal provisions to combat forced labour in 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 supplementary information submitted by Germany in June 2020 replies to some of the specific, targeted questions for this provision on the exploitation of vulnerability, forced labour and modern slavery, except the one relating to prosecution (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”). Germany also provides information concerning the protection of children against trafficking and exploitation, an issue that the Committee assesses under Article 7§10 of the Charter (see Conclusions XXI-4 (2019)).

Criminalisation and effective prosecution

The current report provides no information on the issue of criminalisation and effective prosecution of forced labour and labour exploitation. The Committee notes however from its Conclusions 2019 relating to Article 7.10 of the Charter that all forms of exploitation, including labour exploitation, slavery or practices similar to slavery and servitude, have been criminalised since the Act Implementing Directive 2011/36/EU (*Gesetz zur Umsetzung der Richtlinie 2011/36/EU*) came into effect in 2016. It notes from the last GRETA Report on Germany (Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany, second evaluation round, GRETA (2019)07, 20 June 2019, para. 221) that this Act introduced five new criminal offences: trafficking in human beings (Article 232 of the Criminal Code), forced prostitution (Article

232a), forced labour (Article 232b), labour exploitation (Article 233), and exploitation by means of illegal restraint (Article 233a). The first one includes trafficking for the purpose of labour exploitation as well as for the purpose of holding the victim in slavery, servitude, bonded labour, or under corresponding or similar conditions. GRETA noted with concern the significant proportion of suspended sentences (61.5% according to a study) for human trafficking under the previous legislation (before the new 2016 Act). It therefore considered that the introduction of new offences in 2016 should be combined with efforts to prioritise the investigation and prosecution of trafficking cases, including cases of trafficking for the purpose of labour exploitation (paras. 259-260 of the Report).

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.

The Committee therefore asks that the next report provide information on the application of the abovementioned criminal law provisions in practice, particularly with regard to forced labour, labour exploitation and trafficking in human beings for the purpose of labour exploitation. The report should provide information (including statistics, examples of case law and specific penalties applied) on the prosecution and conviction of exploiters for forced labour and labour exploitation during the next reference period, in order to assess in particular how the legislation is interpreted and applied.

Prevention

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

In reply to the Committee's request for information on whether there are regular inspections in sectors particularly affected by labour exploitation (agriculture, construction, hospitality, manufacturing and domestic work), the current report provides information on different legislative developments relating to the general minimum wage and the different registration and documentation obligations imposed on employers and temporary work agencies in specific economic sectors (those listed in Section 2a of the Act to Combat Undeclared Work and Unlawful Employment (*SchwarzArbG*)), particularly with regard to minimum wage and working hours. Responsibility for reviewing compliance with obligations under the Minimum Wage Act has been transferred to the Federal Customs Administration unit responsible for enforcing the law on illegal employment and benefit fraud (*Finanzkontrolle Schwarzarbeit*, FKS). Its responsibilities also include the fight against undeclared work and certain forms of labour exploitation. Selected inspections are repeatedly carried out in sectors that are particularly at risk; in addition to the construction industry, these include the meat industry, the hotel and catering industry, agriculture and the transport sector. The Committee notes from the supplementary information submitted by Germany that the FKS has seen an enhancement of its competencies in 2019 (outside the reference period) and is now also responsible to identify exploitative labour conditions, forced labour and human trafficking.

The Committee asks for up-to-date information in the next report on the actions carried out by the FKS with a view to detecting and effectively preventing forced labour and labour exploitation in the sectors that are at risk, including the number of victims of such practices

who have been identified as a result of inspections carried out during the next reference period.

The Committee takes note of the supplementary information submitted by the national authorities concerning counselling and information services on labour and social law conditions aimed at refugees and EU citizens working in Germany, especially those from Central and Eastern Europe. It further notes from this information that the Federal Government promotes nationwide networking to combat human trafficking. The Federation-Länder working group on trafficking in human beings was established in the late 1990s. There is also a national coordination group against trafficking in human beings (KOK), which unites 39 specialist counselling centres under its roof. In cooperation with this group, the Federal Government has organised webinars on the topic of human trafficking, in which almost 500 people participated.

In reply to the question on whether the national legislation includes measures designed to force companies to report on action taken to investigate forced labour and exploitation of workers among their supply chains, the Government explains that the German National Action Plan on Business and Human Rights includes supply chain issues. It states that it established guidelines in 2018 and supports structures with a target of 50 per cent of companies required to report on human rights measures incorporated into their operations by 2020, including trafficking in supply chains. As regards due diligence in public procurement processes, the Committee notes from the abovementioned GRETA Report that in 2016, the Act on the Modernisation of Public Procurement Legislation was adopted, obliging companies executing public contracts to comply with social and labour law obligations, including the payment of the minimum wage.

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 national authorities do not provide any relevant information on this point. The Committee accordingly 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. It also asks for general information on the type of assistance provided by the federal or *Länder* authorities (protection against retaliation, safe housing, healthcare, 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.

The Committee also asks for confirmation 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 (which will come into force for Germany on 19 June 2020, outside the reference period), which requires Parties to provide access to appropriate and effective remedies to victims, such as compensation, irrespective of their presence or legal status on 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 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 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, relating to Article 3§2 of the 1961 Charter; 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.

The Committee refers to its previous conclusion (Conclusions XXI-I (2016) for a description of the legislative framework regarding domestic labour, including migrant domestic workers. It noted that domestic employees are subject to the same labour-law conditions as all other employees, as well as to the same criminal law protection. With regard to inspections, the Committee noted that, if the place of work is a private place of residence, inspections by Länder regulatory authorities may only be carried out for the purpose of preventing an imminent threat to public safety and order, with the employer's permission.

No specific information on the existence of regular inspections in the domestic work sector has been provided. However, the Committee notes from the abovementioned GRETA Report that according to estimates for the year 2015, about 80% of persons working in private households in Germany were employed illegally. NGOs had pointed out to GRETA that work inspections usually do not take place in domestic households because access to them is highly restricted. FKS officials are not authorised to enter private households without the occupant's consent (paras. 77 and 129). In this regard, GRETA urged the German authorities to intensify their efforts to prevent trafficking in human beings for the purpose of labour exploitation, in particular by ensuring that inspections can take place in private households with a view to preventing abuse of domestic workers (para. 83). It also referred to the specific problem of exploitation of domestic staff in diplomatic households, considering that the German authorities should continue their efforts to prevent human trafficking among these workers (para. 84).

The Committee notes that other monitoring bodies have also expressed their concerns or requested information about the situation of domestic workers and the existence of effective labour inspections and accessible complaint mechanisms for this category of workers (United Nations Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of Germany, 2018, paras. 42-43; ILO-CEACR, Direct Request – adopted 2016, published at the 106th ILC session (2017), Domestic Workers Convention, 2011 (No. 189), ratified by Germany on 20 September 2013).

In the light of the above, the Committee asks that the next report provide up-to-date and detailed information on the manner in which domestic workers, particularly migrant workers, are protected from labour exploitation and abuse, including by means of inspections (the number of inspections carried out in this sector and the number of victims of forced labour or labour exploitation identified as a result), enforcement of legislation (i.e. penalties applied to employers) and access to remedies (examples of cases brought to the courts by domestic workers).

“Gig economy” or “platform economy” workers

The Committee notes from the information provided by the Government that no specific measures were taken for workers in the “platform economy” during the reference period. However, the Government explains that they benefit from a number of legal improvements introduced during this period for dependent employees (the introduction of the general statutory minimum wage) and for self-employed persons. Although platforms often state that their services are provided by self-employed persons, the terminology used is not relevant for the assessment of a person's employment status in legal terms but rather the way in which a contract is actually carried out. Employers are obliged to check whether the contracts that they conclude involve an employment relationship or a self-employed activity. FKS carries out random and *ad hoc* inspections of companies which may include checks on a person's

employment status. Depending on the results of these inspections, companies may be required to pay social security contributions retroactively as if they had been dependent employees (subject to a four-year limitation period), and criminal or administrative offence proceedings may be initiated. The Government also submits that there are voluntary initiatives and projects aimed at increasing transparency and improving working conditions in the “platform economy” (see Code of Conduct of the *Deutsche Crowdsourcing Verband*).

The Committee takes note of this information and asks that the next report indicate the number of inspections carried out by FKS during the next reference period in this particular sector, the number of self-employed persons identified as dependent employees as a result of these inspections, and to provide examples of cases brought before domestic courts where “platform economy” workers have successfully challenged their employment status and/or their exploitative conditions.

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

Conclusion

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

Article 1 - Right to work

Paragraph 3 - Free placement services

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

Article 1 - Right to work

Paragraph 4 - Vocational guidance, training and rehabilitation

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

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

The Committee considered the situation to be in conformity with the 1961 Charter as regards measures relating to continuing vocational training (Article 10§3) (Conclusions XXII-1 (2020)) as well as to training for persons with disabilities (Article 15§1) (Conclusions XXI-1 (2016)).

It deferred however its conclusion as regards measures concerning vocational guidance (Article 9) (Conclusions XXII-1 (2020)). For the same reason, the Committee defers its conclusion on Article 1§4.

Conclusion

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

Article 9 - Right to vocational guidance

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

The 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.

Vocational guidance within the education system

The Committee previously (Conclusions 2016) took note of the figures concerning the expenditure in the field of career guidance over the period 2011-2014 and the number of specialised advisors offering vocational guidance services. It asked for updated figures on the resources, staff and number of beneficiaries of vocational guidance in the education system to be included in the next report.

The current report indicates that vocational orientation and preparation for career choice is an integral part of the secondary school curriculum in all Länder. Schools usually offer additional curricular activities in cooperation with local employers and the employment agencies, such as work placements, company visits or visits to an employment agency's vocational information centre. According to the report, the aim of such services is to help pupils by improving their skills and abilities related to making career-related life decisions.

In accordance with their statutory mandate, the employment agencies are responsible for providing vocational guidance and orientation for schoolchildren within the school education system. To this end, employment agencies offer individual career guidance in their local offices as well as in the school premises. Vocational guidance in schools is provided by career counsellors from the employment agencies, both for lower and upper secondary levels.

According to the report, the employment agencies and their vocational counsellors offer a range of services, including job-orientation events and workshops, online services, consultation hours, individual initial and follow-up counselling and media services. Labour market experts, commissioners for equal opportunities in the labour market and external partners may be involved in such events when considered appropriate to the situation and needs. In addition to cooperating with schools, the employment vocational guidance services work closely with chambers of commerce and industry, employers' associations, trade unions and other public institutions, such as youth welfare organisations and social welfare offices.

The report further indicates that job centres, employment agencies, youth welfare organisation and other partners cooperate in youth employment agencies, so that young people receive coordinated and individual support in the transition from school to training and work. According to the report, in 2013 the coalition agreement of the Federal Government outlined the nationwide establishment of youth employment agencies for the first time. By January 2017, 289 youth employment agencies had been established.

As regards the number of beneficiaries of guidance services within the training system, the report indicates that over the years 2014-2018, a total of 4,542,295 persons addressed the employment agencies and job centres.

The Committee notes that the report does not provide up-to-date information on the budget allocated and on the staff involved in vocational guidance services within the education system. It therefore reiterates its request for such information as well as information on trends in the area. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation is in conformity with Article 25 of the Charter on this point.

Vocational guidance in the labour market

In its previous conclusion (Conclusions 2016), the Committee noted that it was not clear whether the figures indicated in the report in relation to vocational guidance in the education system also covered vocational guidance in the labour market.

The current report indicates that the statutory responsibility of the FEA for vocational guidance also includes adults, who are given guidance particularly in the process of integration into work (e.g. in the development of a profile for job applications, opportunities on the labour market and training needs). As soon as they register as job seekers at the employment agencies, they are given access to a placement specialist for a guidance and placement interview.

As regards the number of beneficiaries of guidance services within the labour market, the report indicates that during the reference period the number of employees or jobseekers that have addressed employment agencies were respectively 7,516,632 in 2015, 7,704,244 in 2016, 7,554,093 in 2017 and 7,212,513 in 2018.

The Committee notes that the report does not provide up-to-date information on the resources and staff involved in vocational guidance services within the labour market. It therefore asks the next report to provide such information as well as information on trends in the area. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation is in conformity with Article 25 of the Charter on this point

Conclusion

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

Article 10 - Right to vocational training

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

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

The Committee refers to its previous conclusions for a description of the situation which it found to be in conformity with the Charter (see Conclusions XXI-1, 2016). The Committee notes that legislation on opportunities for skills development (“Qualifizierungschancengesetz”) came into force on 1 January 2019, giving all employees access to skills development programmes, regardless of their levels of training, age or the size of their companies.

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

The report indicates that Germany has a dual training system, which combines in-company training and school-based training. More than half a million training contracts are concluded every year. According to the authorities, approximately three-quarters of all individuals who completed their training were retained by the companies that provided the training, a figure which has risen steadily over the years (it was 67% in 2013).

Regulations on apprenticeships and vocational qualifications are regularly reviewed to bring them into line with the demands of the labour market, such as the development of new technology and digital transformation. Training curricula that cover all occupations have been established as minimum standards in all training regulations.

The report also indicates that substantial levels of federal funding are provided to help young people enter employment. Under the “Education Chains” initiative, approximately 113 000 young people received career entry support for four years, starting in their second-last year of schooling (2014/2015 to 2018/2019).

The authorities state that young adults are given particular priority. In particular, the Committee notes the existence of the “Jugend stärken” programme, which supports young people with special educational needs.

Programmes to certify occupation-relevant skills (e.g., valiKom project) of people without vocational qualifications increase their chances on the labour market, in particular through certificates issued by chambers of crafts, industry, commerce or agriculture.

Measures taken to integrate migrants and refugees

The report indicates that the promotion of training for foreigners is particularly challenging for the authorities. In order to improve access to the labour market for foreigners, German language training has been opened up more widely for asylum seekers with leave of stay and refugees whose deportation has been temporarily suspended. Since 2016, there has been a particular focus on refugees aged over 25, for whom a programme involving co-operation between the Federal Office for Migration and Refugees and the Federal Employment Agency has been set up (“Kommit”). This four-phase programme seeks to ensure the social and vocational integration of people with migrant backgrounds through skills development. The Committee notes that new rules have been introduced following the entry into force of the Act to Promote the Employment of Foreigners in August 2019.

The report indicates that around 470 youth migration services (Jugendmigrationsdienste) provide specific support nationwide for young migrants from 12 to 27 years of age in terms of linguistic, educational, vocational and social integration, primarily in the transition from school to work. The programme is part of the “Jugend stärken” scheme (see above).

In addition, the Federal Government has introduced several programmes and projects to integrate migrants and refugees in in-house company training programmes. The Committee notes that these schemes allow the recruitment of entrepreneurs with migrant backgrounds into training programmes and the implementation of specific projects such as integration of

mothers with migration backgrounds in the labour market and assisting young people with migration backgrounds with vocational integration.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 2 - Apprenticeship

The Committee 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 Germany.

In its previous conclusion (Conclusions XXI, 2016), the Committee held that the situation in Germany was in conformity with Article 10§3 of the Charter, pending receipt of the information requested.

The Committee notes that Germany 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").

On 1 August 2016, the Act to Strengthen Continuing Education and Training and Unemployment Insurance Coverage (Gesetz zur Stärkung der beruflichen Weiterbildung und des Versicherungsschutzes in der Arbeitslosenversicherung (AWStG) introduced the following rules in the field of continuing education and training and unemployment insurance coverage: To prepare for certification-relevant further training, workers who have not completed vocational qualifications may receive support from employment agencies or job centres for the acquisition of necessary basic skills, in particular in reading, writing, mathematics, information technologies and communication technologies in order to enable them to successfully participate in certification-relevant continuing education and training.

In order to motivate more low-skilled workers to take part in certification-relevant continuing education and training and to encourage them to persevere, a continuing training bonus of 1,000 euros will be granted if they pass an intermediate examination as required by the training regulations and a bonus of 1,500 euros if they pass the final examination.

In order to support successful completion of training and also to strengthen the willingness of companies to provide sufficient retraining places, there is the possibility of providing retraining assistance where necessary.

The Skills Development Opportunities Act, which came into force on 1 January 2019 (outside the reference period), gives all employees access to skills development promotion irrespective of the level of training, age and company size. Existing support instruments that were previously only available to low-skilled workers, workers at risk of unemployment and workers in small and medium-sized enterprises are now generally open to all employees. The Skills Development Opportunities Act also improves the promotion of continuing education and training for employed workers whose work can be replaced by technologies, or who are otherwise affected by structural changes or who want to take up further training.

In response to the Committee's request for information on strategies and measures in place to ensure skilling and re-skilling in the full range of competencies, needed by workers to be competitive in emerging labour markets, the report refers to several initiatives and measures. According to the report, in the context of "Vocational Training 4.0 Initiative", the research initiative "Skills for the digital workplace of tomorrow" and the programme "Digital Media in vocational training" have been launched. Their aim is to modernize and enhance vocational education and training to meet the requirements for learning and working in a digital society.

In addition, the ValiKom project, funded by the Federal Government, has been developed with the purpose of offering evaluation and certification to occupational skills.

Moreover, according to the report, digital technology is part of inter-company vocational training, both in terms of facilities and in content of training, while a special programme, "ÜBS and digital technology" has been launched since 2016, aiming to implement the digital transformation of professional training.

Finally, the report refers to the training programme "JOBSTARTER plus". The projects funded in the last funding period of this programme, which started in 2019, focus *inter alia* on digital

skills and additional qualifications and on the development of sector-specific learning services related to digital technologies.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 10§3 of the 1961 Charter.

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

Paragraph 1 - Education and training for persons with disabilities

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

The Committee previously found the situation to be in conformity with Article 15§1 of the Charter (Conclusions XXI-1, 2016).

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

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

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

Legal framework

The report states that Article 3 of the Constitution (*Grundgesetz*) prohibits discrimination on the ground of disability. The Federal Constitutional Court has ruled that parents can insist that their children attend a mainstream school (rather than a special needs school) if this can reasonably be achieved (for example with special needs support). The right to attend a mainstream school for children with disabilities is enshrined in the school laws of all *Länder*, and according to the report the *Länder* make reasonable provision for this.

According to other sources [Academic Network of European Experts on Disability-(ANED)] if a child needs special support in order to attend a mainstream school, they may receive an additional teacher and/or personal assistance. Personal assistance is provided through the “Integration Support for Disabled People” under the social assistance law regulated in the Social Code Book XII. According to the ANED the costs of this type of support are reimbursed and are not means tested. There are professional services that offer such assistance to children with disabilities.

The Committee refers to its previous conclusion (Conclusions XX-1 (2012)), in which it noted that Article 2§ of Book IX of the Social Code defines 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

According to the report there are 544,600 schoolchildren receiving special needs support in Germany. The number of children with special educational needs (SEN) in 2015/2016 in special schools was 322,518 (62.3%) and the number attending mainstream schools was 194,866 (37.7%), the corresponding figures for 2017/2018 were 317,480 (57.5%) and 227,150 (42.5%) indicating an increase in the number of children with disabilities/SEN in mainstream schools.

According to data provided in the European Agency Statistics on Inclusive Education (EASIE) 2018 Dataset Cross-Country Report, in primary and lower secondary schools providing compulsory education, 5.45% of children were recognised as having SENs; of these 43.39% were in inclusive education, and 56.61% in special schools.

The Committee notes that while there has been an increase in the number of children with SEN attending mainstream schools over the reference period, the majority of children with SEN attend special schools. The Committee emphasises that under Article 15§1 of the Charter States Parties must guarantee the right to education in an inclusive setting.

The Committee notes in this respect from the Concluding Observations of the UN Committee on the Rights of the Persons with Disabilities (CRPD/C/DEU/CO/1, 13 May 2015) that the UN Committee was concerned that Germany had an education system where the majority of students with disabilities attended segregated special-needs schools.

The Committee asks for the Governments comments on this.

The Committee notes (see below) that Germany has taken important steps to create an inclusive education system.

However 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 the issue of costs associated with education the Committee asks whether children with disabilities or 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 report states that in line with the implementation of the UN Convention on the Rights of Persons with Disabilities, the creation of an inclusive education system is a priority. The recommendation on “Inclusive Education of Children and Young People with Disabilities in Schools” (decision of the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder (KMK), 20 October 2011), has made the qualitative and quantitative expansion of inclusive education a priority for the education policies of the Länder.

The KMK has created a framework for teachers to acquire skills to enable an inclusive system. In 2014 the "Standards for teacher training: Educational Sciences" (current version: 2019) and in 2017 the "Joint Länder standards for subject-matter expertise and didactics in teacher training" (current version 2019) were revised from an inclusion perspective.

The Programme on "Quality Offensive in Teacher Training" adopted by the Joint Science Conference in April 2013 contributes to the implementation of the UN Convention on the Rights of Persons with Disabilities. This initiative aims at updating teacher training in order to ensure the inclusion of children with SEN into mainstream schools over a 10 year period which began in 2014 and is funded by the Federal Government

According to the report the Länder regularly provide information on the status of the implementation processes of inclusive education to the committees of the KMK and in an annually updated overview of the KMK on the "Implementation of inclusive education in the Länder".

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

The Committee has recognised that “integration” and “inclusion” are two different notions and that integration does not necessarily lead to inclusion (Mental Disability Advocacy Centre (MDAC) v. Belgium Complaint No.109/2014, Decision on the admissibility and merits 16 October 2017, International Federation for 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

Parents whose request for education in an inclusive setting has been denied can appeal to the Administrative Court. The report explains that neither the courts nor the authorities in the *Länder* responsible for supervising schools collect data concerning the number of such requests, or the outcome of such cases. 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. It emphasises it needs this information in order to assess the situation.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 15§1 of the 1961 Charter.

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

Paragraph 2 - Employment of persons with disabilities

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

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”) as well as previous conclusions of non-conformity or deferrals.

The previous conclusion found the situation to be in conformity (Conclusions, XXII-1 2016)

Legal framework

The Committee recalls from previous conclusions that the General Equality Act [*Allgemeines Gleichbehandlungsgesetz*, AGG] and Social Code Book IX (section 81 paragraph 2 SGB IX) provide protection against discrimination inter alia on grounds of disability and includes an obligation on employers to make reasonable accommodation (Conclusions 2012, 2016). The Act on Equal Opportunities for Persons with Disabilities (BGG) also provides for a general obligation to ensure accessibility.

In its previous conclusions (Conclusions XX-I (2012) XX-4 (2016)), the Committee asked for information about the right of people with disabilities, whatever the type and degree of their disability, to reasonable accommodation; and whether the reasonable accommodation obligation applies to all persons with disabilities.

The report refers in this respect to section 164 (4) of Book IX of the Social Code which provides for individual and legally enforceable obligations. These obligations include the obligations of employers to equip the plant and the workplace in line with the needs of the person with disabilities.

The report states that the Federal Participation Act adopted in late 2016, amends several laws with the goal of strengthening the participation in society of people with disabilities and their self-determination and strengthens the opportunities for labour force participation of persons with disabilities and incentives to promote engagement in gainful employment. It further strengthened the role of employee representatives of employees with severe disabilities. For example it reorganizes integration assistance outside of the social security framework, increases the income and cash allowance that people with disabilities can have before they lose the right to receive federal benefits, establishes new independent counselling centres with peer counselling, simplifies procedures, and improves workplace integration management mechanisms in order to better identify the type of assistance or support needed to overcome a worker’s inability or difficulties in work.

Access of persons with disabilities to employment

The Committee notes from the information on the report that the number of persons with severe disabilities in employment has remained stable over the reference period 1,197,922; in 2015 and 1,267,752 in 2018. The proportion of persons with severe disabilities employed under the quota system has remained unchanged over the reference period (167,700).

The annual average of persons with severe disabilities who were unemployed declined slightly over the reference period from 178,809 in 2015 to 156,621 in 2018.

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) employment rates of persons with disabilities are higher in Germany (48.9%) than the EU average but unemployment rates are also higher 23.9% than the EU averages (48.1% and 19.6%).

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.

Measures to promote and support the employment of persons with disabilities

In the years 2015 to 2018 the Federal Employment Agency funding for occupational rehabilitation including assistance for persons with severe disabilities increased from 2.4 billion euros to 2.6 billion euros.

Measures used by the Federal Employment Agency to promote the integration of persons with disabilities into training and employment, include:

- Subsidies aimed at topping up training pay or a comparable remuneration
- Integration grants,
- Work trials,
- Subsidies to adjust a workplace to the needs of a person with disabilities
- counselling for persons with severe disabilities and for employers (e.g. when selecting suitable workplaces and their disability-specific design).
- Reimbursement of costs for the necessary work assistance.
- Loans or subsidies to start and maintain a self-employed professional existence.
- Reimbursement of costs for professional coaching in order to secure the retention of the employment relationship entered into after the expiry of the supported employment measure.
- Subsidies to employers to cover extraordinary costs in respect of the employment of a person with severe disabilities if the employment relationship was at risk without the payment of this benefit (so-called reduced performance compensation).

During the reference period the National Action Plan 2 for the implementation of the UN Convention on the Rights of Persons with Disabilities promoted and supported the development of inclusion companies. Inclusion companies are companies which differ from normal companies insofar as they employ above-average numbers of specially affected persons with severe disabilities, i.e. 30 per cent or more. This means that inclusion companies offer employment to those persons with severe disabilities whose performance level is above the level required in sheltered workshops, but for whom it is difficult to find employment in the general labour market even with all the support offered. These persons are employed in jobs that are subject to mandatory social insurance coverage. Inclusion companies are an important instrument to encourage the transition from a workshop to the general labour market.

A total of 150 million euros from the national rehabilitation fund have been invested since 2016 in the framework of the "Inclusion Initiative II – InclusiveEmploymentForAll" ("*Inklusionsinitiative II – AlleImBetrieb*") to create and expand training and workplaces in inclusion companies. The category of persons who can be employed in inclusion companies has been extended to long-term unemployed persons with severe disabilities and supported employment in inclusion companies has now been made available to mentally ill persons who have a disability or are at risk of developing a disability and whose participation in another form of employment in the general labour market is particularly difficult on account of the type or severity of the disability or other circumstances.

The Committee asks the next report to provide updated information on measures to encourage the employment of persons with disabilities on the open labour market, in particular those taken as a result of the Federal Participation Act.

Remedies

The Committee asks the next report to provide updated information on remedies as well examples of relevant case law. 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 concludes that the situation in Germany is in conformity with Article 15§2 of the 1961 Charter.

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

Paragraph 1 - Applying existing regulations in a spirit of liberality

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

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.

It notes that all nationals of states belonging to the European Union or the European Economic Area (EEA) or of Switzerland, together with their family members, have free access to the labour market. According to the report, they are legally equivalent to nationals.

Work permits

According to the report, access to the German labour market is governed by the provisions of the Residence Act (AufenthG) and the Ordinance on the employment of foreigners (BeschV). To enter the country and reside there, third-country nationals must hold a residence permit entitling them to engage in gainful employment. In some cases, the approval of the Federal Employment Agency is required for a residence permit to be granted. Approval is obtained from visa offices or the authorities dealing with foreigners as part of an internal procedure of the Federal Employment Agency.

The Committee refers to its previous conclusion (Conclusions XXI-I (2016)) for a description of the various types of residence permit.

The Committee asks for full and up-to-date information in the next report on the types of residence permit currently issued to nationals of States Parties to the Charter for an employment or a self-employed occupation and the conditions of entitlement to a first work permit or the extension of a permit.

The Committee notes that after the entry into force of the Skilled Labour Immigration Act of 15 August 2019 (outside the reference period), the notion of “priority”, on the basis of which the Federal Employment Agency checks whether a vacant post can be filled by a German national before authorising the recruitment of a skilled foreign worker will no longer apply. The Committee asks for information in the next report on the categories of activity for which there is no preliminary review of the national employment situation under the Community preference rules.

Relevant statistics

In its previous conclusion (Conclusions XXI-I (2016)), the Committee noted that in the absence of data on the number of first-time or renewal applications for work permits from nationals of non-EEA States Parties to the Charter granted or rejected, as a proportion of total applications, or any information on the reasons for rejections, it was not able to establish whether the situation was in conformity with Article 18§1 of the 1961 Charter.

The report states that information on the number of approvals and rejections given for the employment of third-country nationals is published. However, the report does not provide any statistics and states that the Federal Employment Agency has no data on the number of persons who have been granted a residence permit for the purpose of gainful employment.

The Committee notes from the OECD report of 2019 on recent changes in migration movements and policies that in 2018, 13.2 million of Germany’s inhabitants were foreign nationals (49% of whom were women), amounting to 16% of the total population. According to this report, a total of 1.55 million arrivals (including temporary stays) were recorded in 2017, and 860,000 of these were new immigrants settling on a long-term or permanent basis (including changes of status and free mobility). The OECD report states that this figure comprises 48% immigrants benefitting from free mobility, 7.2% labour migrants, 13.4% family

members (including accompanying family) and 30.7% humanitarian migrants. It also states that the number of arrivals considerably decreased in 2017 (for the second year in a row). Romania, Poland and Bulgaria were the top three nationalities of newcomers in 2017.

The Committee points out that in order to assess the degree of liberality in applying existing regulations, it requires figures showing the rejection rates for work permits for both first-time and renewal applications. In the absence of relevant information in the report despite its repeated requests in previous conclusions, the Committee concludes that the situation is still not in conformity with Article 18§1 of the 1961 Charter on the ground that it has not been established that the regulations governing the right to engage in a gainful occupation are applied in a spirit of liberality.

Conclusion

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

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

Paragraph 2 - Simplifying existing formalities and reducing dues and taxes

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

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

Paragraph 3 - Liberalising regulations

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

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.

Access to the national labour market/Exercise of the right of employment

In its previous conclusions (Conclusions XXI-1 (2016)), given that the State Party had repeatedly failed to provide answers to the questions asked, the Committee concluded that the situation was not in conformity with Article 18§3 of the 1961 Charter on the ground that it had not been established that the existing regulations had been liberalised.

In reply to the Committee's question, the report states that nationals of a State Party to the Charter (non-EU/EEA) may pursue an economic activity without any restrictions or be self-employed if their residence permit contains a stamp to that effect ("*Erwerbstätigkeit gestattet*" or "*Jede Erwerbstätigkeit gestattet*"). The Committee asks for the next report to clearly indicate under what conditions a national of a State Party to the Charter which is not a member of the EEA may access the German labour market as a self-employed worker.

The Committee observes that following the entry into force of the law on the immigration of a skilled labour force adopted on 15 August 2019 (outside the reference period), the concept of "priority", under which the Federal Employment Agency checks whether a vacant post can be filled by a German worker before authorising the recruitment of a skilled foreign worker, will no longer be applicable.

The report outlines the system for recognising certificates, professional qualifications and foreign diplomas in Germany. It indicates, in particular, that for the purpose of further study in Germany, the respective institutions of higher learning are themselves responsible for recognising academic qualifications and examination results acquired abroad. For academic degrees, an assessment certificate (*Zeugnisbewertung*) may be requested. The assessment certificate describes the type and duration of the higher education and specifies the equivalent in the German education system (Bachelor's or Master's degree). The report further indicates that recognition of professional qualifications may also be necessary for certain professions (for example, doctors, teachers, etc.). The recognition procedure may only be initiated on request: the competent authority assesses the equivalence of the foreign professional qualifications (compared with the professional qualifications profile of a German reference profession). According to the report, some additional documents are required to assess equivalence, in particular those that show the content and duration of the training (professional experience and other qualifications are also taken into account). The Committee observes that measures have been taken to liberalise the regulations on the recognition of certificates, professional qualifications and foreign diplomas.

The Committee asks for the next report to provide statistical data on the number of work permit applications made by nationals of States Parties to the Charter which are not part of the EEA, the rates of acceptance/refusal and the grounds for refusal, both for initial and renewal applications.

It also asks for up-to-date information on the conditions to be met to gain unrestricted access to the German labour market.

Consequences of loss of employment

In its previous conclusion (Conclusions XXI-1 (2016)), the Committee asked under what circumstances the premature loss of employment could lead to a residence permit being revoked.

In reply, the report points out that under Article 7§2 of the law on residence, the department responsible for foreigners may retroactively limit the length of the residence permit if the foreign worker loses their job, without grounds for deportation arising at the same time. The department has a broad margin of discretion, but it must take into account the individual situation of the worker, including in particular the length of stay, the type and scope of their previous job and their unemployment benefits contributions. According to the report, the local authorities in charge of applying the legislation on residence are not subject to supervision by the federal government. Therefore, there are no centralised figures on this matter.

The Committee again points out that under Article 18§3 of the Charter, the loss of employment should not lead to the cancellation of the residence permit, which would require the worker to leave the country as soon as possible. The validity of the residence permit should in fact be extended to give them enough time to find a new job (Conclusions XVII-2, Finland). The Committee considers, according to the report, that residence permits are not automatically withdrawn when foreign workers lose their jobs, but that the length of their validity may be shortened. Therefore, the Committee asks for the next report to clearly indicate whether and for how long workers are able to continue residing in Germany and look for another job by applying for new work permits. The Committee points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Germany is in conformity with Article 18§3 of the Charter in this respect.

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.

