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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions XXII-1 (2020)

DENMARK

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 Denmark, which ratified the 1961 European Social Charter on 3 March 1965. The deadline for submitting the 39th report was 31 December 2019 and Denmark submitted it on 21 January 2020.

The Committee recalls that Denmark 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).

Denmark has accepted all provisions from the above-mentioned group.

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

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

– 6 conclusions of conformity: Articles 1§1, 1§2, 1§3, 10§1, 10§3 and 15§2.

– 2 conclusions of non-conformity: Article 10§4 and Article 1 of the Additional Protocol.

In respect of the other 2 situations related to Articles 1§4 and 15§1, the Committee needs further information in order to examine the situation.

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

The next report from Denmark 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 Denmark.

Employment situation

According to Eurostat, the GDP growth rate fluctuated during the reference period, increasing from 2.3% in 2015 to 3.2% in 2016, then falling to 2.8% in 2017 and to 2.2% in 2018, a rate that is higher than the average for the 28 European Union (EU) member States (2% in 2018).

The overall employment rate (persons aged 15 to 64 years) increased from 72% in 2015 to 74.1% in 2018, a rate that is above the EU 28 average (68.6% in 2018).

The employment rate for men increased from 75.2% in 2015 to 76.9% in 2018, a rate that is above the EU 28 average (73.8% in 2018). The employment rate for women rose from 68.7% in 2015 to 71.3% in 2018, a rate that is well above the EU 28 average (63.3% in 2018). The employment rate for older workers (55 to 64-year-olds) increased from 63% in 2015 to 69.2% in 2018, a rate that is more than ten percentage points (pps) higher than the EU 28 average (58.7% in 2018). The youth employment rate (15 to 24-year-olds) increased from 51.3% in 2015 to 53.7% in 2018, a rate that is almost 20 pps higher than the EU 28 average (35.3% in 2018).

The overall unemployment rate (persons aged 15 to 64 years) fell from 6.5% in 2015 to 5.3% in 2018, a rate that is below the EU 28 average (7% in 2018).

The unemployment rate for men dropped from 6.3% in 2015 to 5.1% in 2018, a rate that is below the EU 28 average (6.7% in 2018). The unemployment rate for women fell from 6.6% in 2015 to 5.4% in 2018, a rate that is below the EU 28 average (7.2% in 2018). Youth unemployment (15 to 24-year-olds) dropped from 12.2% in 2015 to 10.5% in 2018, a rate that is below the EU 28 average (15.2% in 2018). Long-term unemployment (12 months or more, as a percentage of overall unemployment for persons aged 15 to 64 years) dropped from 25.7% in 2015 to 19.1% in 2018, a rate that is well below (almost 25 pps) 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) increased from 7% in 2015 to 7.7% in 2018 (as a percentage of the 15 to 24-year-old age group), a rate which is still below the EU 28 average (10.5% in 2018).

The Committee notes the labour market performance in Denmark, as compared with other States Parties. It notes in particular the progress made in improving the employment prospects of older workers and in tackling long-term unemployment.

Employment policy

In its report, the Government indicates that a number of labour market policy reforms have been initiated during the reference period. The “reimbursement reform” (which modified the amounts reimbursed by the state to municipalities for the unemployment benefits paid to jobseekers), the “job reform, phase 1” (which has capped the total amount of social benefits and introduced a required annual number of hours worked to receive this total amount) and the reform of the unemployment benefit system entered into force in 2016-2017. In addition, the Government and the political parties reached an agreement in 2018 on simplifying the employment services (to reduce bureaucracy). The aims of these reforms were, *inter alia*, to encourage municipalities to concentrate on active policies and results and to speed up jobseekers’ return to work.

According to European Commission data, public expenditure on labour market policies (as a percentage of GDP) decreased from 3.2% in 2015, to 3.04% in 2016 and 2.94% in 2017 (of which 1.39% was for active measures and 1.09% for passive measures in 2017). The activation rate likewise decreased, from 53.9% in 2015 to 48.5% in 2017.

The Committee notes that the European Commission has pointed out that despite the growth in employment and the reduction in unemployment, some groups, in particular persons from an immigrant background, remain on the margins of the job market in Denmark (Commission staff working document, Denmark Country Report 2018, SWD(2018) 203 final, 7 March 2018). The Committee requests that the next report provide information on the labour market policy measures taken by the authorities to support migrants and refugees.

Conclusion

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

1. Prohibition of discrimination in employment

Article 1§2 of the 1961 Charter prohibits all forms of discrimination in employment. The Committee asked the State Parties to provide updated information for this reporting cycle on the legislation prohibiting all forms of discrimination in employment, in particular on grounds of gender (had Article 1 of the Additional Protocol not been accepted), race, ethnic origin, sexual orientation, religion, age, political opinion, disability (had Article 15§2 not been accepted), including information on legal remedies. It furthermore asked to indicate any specific measures taken to counteract discrimination in the employment of migrants and refugees.

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

The Committee recalls that Denmark has accepted Article 15§2 of the 1961 Charter and Article 1 of the Additional Protocol to the 1961 Charter. For aspects concerning discrimination in employment on grounds of disability and gender, the Committee thus refers to its Conclusions on these provisions.

As regards the legislation prohibiting discrimination in general terms, the report indicates that the Act on Prohibition against Discrimination in the Labour Market explicitly prohibits discrimination on the grounds of race, colour of skin, religion or faith, political views, sexual orientation, age, disability or national, social or ethnic origin. The report specifies that the Act has not been amended in the period 2015-2018.

The Committee has examined the legal framework in its previous conclusions and found it to be in conformity with the Charter (Conclusions XXI-1(2016), Conclusions XX-1(2012), Conclusions XIX-1 (2008), Conclusions XVIII-1 (2006).

With regard to discrimination on grounds of race and national or ethnic origin, the Committee takes note that according to a report of the Danish Institute for Human Rights, "*43% of immigrants and descendants of immigrants of non-Western origin felt discriminated against due to their ethnicity in 2016*" (Danish Institute for Human Rights, Annual Report to the Danish Parliament 2017-2018, p. 18). It further takes note of the concerns expressed by the European Equality Law Network that Denmark faces challenges and barriers preventing minorities from taking part in society on an equal footing. The same source indicates that there is a profound lack of recognition that such discrimination takes place in Danish society and there is a serious lack of statistics and general research on discrimination. It is pointed out that research should be undertaken to examine institutional barriers that prevent minorities from gaining access to the labour market and obtaining jobs that match their education (European Equality Law Network, Country Report on non-discrimination, 2019).

While noting the above-mentioned information, the Committee asks that the next report provide information on any measures taken in practice to prevent and combat discrimination based on race and national or ethnic origin and to ensure equal access to the labour market. It also asks for statistical data on the employment situation of immigrants and their descendants.

The current report indicates that no specific measures have been taken to counteract discrimination in the employment of migrants and refugees. The Committee notes that according to an Observation of ILO-CEACR, "*the statistics showed a much higher unemployment rate for immigrants from non-Western countries (13.2 per cent for men and 14*

per cent for women), compared to Danish nationals (5.6 per cent for men and 5.5 per cent for women)". It also notes from the same source that the Government's National Reform Programme 2015 and the Government Plan of 2015 included new integration initiatives aiming to ensure that refugees and immigrants obtain employment as soon as possible (Observation (CEACR) – adopted 2015, published at the105th ILC session (2016), Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Denmark (Ratification: 1960). The Committee asks information on the impact of such initiatives on the integration into the labour market and access to the employment of migrants and refugees with no discrimination.

While noting a worrying trend of anti-foreigner measures pointed out by other sources (such as the European Equality Law Network in Country Report 2019), the Committee requests that the next report provide comprehensive information on the employment situation of migrants and refugees, and on any measures taken to ensure their integration into the labour market and equal access/conditions to employment.

The Committee further recalls that appropriate and effective remedies must be ensured in the event of an allegation of discrimination. The notion of effective remedies encompasses judicial or administrative procedures available in cases of an allegation of discrimination, able to provide reinstatement and compensation, as well as adequate penalties effectively enforced by labour inspection; furthermore, an appropriate adjustment of the burden of proof which should not rest entirely on the complainant, as well as the setting-up of a special, independent body to promote equal treatment. The Committee explicitly requested information on remedies for this examination cycle.

The report indicates that cases concerning the violation of rights under the Act on Prohibition against Discrimination on the Labour Market may be brought before the civil courts or the Board of Equal Treatment. Cases before the Board of Equal Treatment are free of charge and the Board will decide the cases on a written basis only. The report further indicates that in case the court or the Board finds that the complainant's rights have been violated, compensation is awarded to the complainant and no ceilings apply to the level of compensation.

The Committee asks whether legislation provides for any sanctions/penalties enforced against the employers in cases of discrimination (the minimum/maximum amount of fines). The Committee also asks for information on the remedies available to victims in case of discriminatory termination of employment.

As regards the burden of proof in cases of alleged discrimination in employment, the Committee noted previously that the burden of proof in all cases concerning discrimination rests with the employer once the claimant introduces *prima facie* evidence that he/she has been the subject of discrimination (Conclusions XVIII-1 (2006)).

With regard to equality bodies, the Committee took note in its previous conclusions of the mandate and activity of the Board of Equal Treatment and the Danish Institute for Human Rights (see Conclusions XXI-1 (2016) and Conclusions XX-1 (2012)). The Committee notes that according to the European Equality Law Network, the visibility of the Board among possible victims of discrimination was still relatively low (especially for ethnic minority groups) and the monitoring of case law in Danish courts was severely hindered due to a lack of free public access to case law. The same source indicates that the low number of discrimination inquiries illustrated that, for possible victims of discrimination, either there was little assistance from equality bodies or there was no general confidence that approaching them would help in concrete terms.

The Committee asks updated information in the next report on examples of cases related to discrimination in employment brought before the Board of Equal Treatment and the courts, including information on measures/sanctions imposed on employers and the amount of compensation granted to victims of discrimination. It also asks information on the

assistance/activity of the Danish Institute for Human Rights in relation to complaints alleging discrimination in employment together with relevant data/statistics.

As regards discrimination in employment on grounds of nationality, the Committee noted previously that, in general, there is no requirement of Danish nationality in connection with appointments in central government administration with some exceptions such as: permanent secretaries; judges; senior deputy judges; certain positions as prosecutor; employees in the police corps; governors of prisons; prison officers; inspectors of the fishery inspection; priests/deans; bishops. It asked confirmation that nationals of States Parties to the European Social Charter which are not members of the EU and EEA may be employed in public sector posts with the exception of the positions listed above (Conclusions XXI-1 (2016)).

The report does not provide the requested information. The Committee notes from the Country Report of the European Equality Law Network that in the public sector, 'Danish citizenship' is a selection criterion for the police, judges etc. The same source indicates that, however, public employees in most sectors are not required to be Danish citizens. Apart from these particular job categories, requirements of nationality in the private and public sector may be considered indirect discrimination due to national or ethnic origin. The Committee considers that the situation is in conformity with the 1961 Charter on this point.

Pending receipt of the information requested, the Committee concludes that the situation in Denmark is in conformity with Article 1§2 of the 1961 Charter with regard to the aspect of prohibition of discrimination in employment.

2. Forced labour and labour exploitation

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

Referring to the Court's judgment of *Siliadin v. France,* the Committee has in the past drawn the States' attention to the problem raised by forced labour and exploitation in the domestic environment and the working conditions of the domestic workers (Conclusions 2008, General Introduction, General Questions on Article 1§2; Conclusions 2012, General Introduction, General Questions on Article 1§2). It considers that States Parties should adopt legal provisions to combat forced labour in 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 present report replies to the specific, targeted questions for this provision on forced labour including the "gig economy" workers (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities").

Criminalisation and effective prosecution

The legislation regarding exploitation of vulnerability and human trafficking to exploit a person for forced labour and slavery is found in sections 262a and 282 of the Danish Criminal Code.

Section 262a in the Criminal Code provides that "(1) A penalty of imprisonment for a term not exceeding ten years for human trafficking is imposed on any person who recruits, transports, transfers, harbours or subsequently receives another person who is or has been subjected to (i) duress as defined in section 260; (ii) deprivation of liberty as defined in section 261; (iii) threats as defined in section 266; (iv) the wrongful creation, confirmation or exploitation of a mistake; or (v) any other improper procedure, to exploit such other person for prostitution, the taking of pornographic photographs, the recording of pornographic films, pornographic performances, forced labour, slavery, practices similar to slavery, criminal acts or the removal of organs. (2) The same penalty is imposed on any person who, for the purpose of exploitation of such other person for prostitution, the taking of pornographic photographs, the recording of pornographic films, pornographic performances, forced labour, slavery, practices similar to slavery, criminal acts or the removal of organs -(i) recruits, transports, transfers, harbours or subsequently receives a person under the age of 18; or (ii) gives payment or other benefits to obtain the consent to such exploitation from a person having control over the victim and from the person receiving such payment or benefit."

Section 261 of the Criminal Code criminalises deprivation of a person's liberty. According to section 261, subsection 1, any person who deprives someone of their liberty is sentenced to a fine or imprisonment for a term not exceeding four years. According to section 261, subsection 2, it is considered an aggravating circumstance if the deprivation of liberty is effected for gain or for a long period, or if the deprivation of liberty is effected because someone was improperly held in custody as a person suffering from a mental disorder or mental retardation, enrolled in foreign war service, or confined to captivity or other dependency

in a foreign country. Under those conditions, the penalty is imprisonment for a term not exceeding 12 years. Any person who causes someone to be deprived of their liberty as referred to in subsection 2 by gross negligence is sentenced to a fine or imprisonment for a term not exceeding six months.

Exploitation of a person's vulnerability in a contractual relationship is criminalized in section 282 in the Criminal Code. The section can be used, but is not limited to, cases of forced labour. "A person is guilty of usury if he/she exploits another person's substantial financial or personal problems, lack of insight, rashness or an existing dependency relationship to obtain or stipulate a condition of a service in a contractual relationship which is highly disproportionate to the compensation or for which no compensation is payable."

The Committee considers that Denmark has developed a strong legal framework to fight forced labour. However, it 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 therefore asks that the next report provide information on the enforcement of the abovementioned criminal law legislation. The report should provide information (including statistics and examples of case law) on the prosecution and conviction of exploiters for slavery, forced labour and servitude during the next reference period, in order to assess in particular how the legislation is interpreted and applied.

Prevention

According to information provided in the report, the Danish efforts to combat trafficking in human beings have been regulated by consecutive National Action Plans (NAP's) since 2002. The NAPs include measures on trafficking for forced labour. The fifth NAP covers 2019-2021. This NAP continues and develops previous efforts, and ensures that Denmark continues to live up to international conventions.

The objectives of the NAP are to:

- Build confidence in and knowledge about the possibilities for support and assistance for victims and potential victims of human trafficking;
- Provide information on human trafficking in relevant communities and build knowledge and awareness about human trafficking and thereby prevent and reduce demand;
- Prevent human trafficking through training relevant players and through knowledge and information;
- Identify victims of human trafficking so that they can be offered assistance, support and prepared repatriation;
- Offer prepared repatriation and reintegration to foreign nationals who are victims of trafficking, and who must or want to leave Denmark, to help them to a life without human trafficking;
- Investigate and prosecute traffickers in order to help curb human trafficking;
- Cooperate and coordinate to contribute to flexible, targeted and effective efforts against human trafficking;
- Provide knowledge about human trafficking to strengthen efforts and limit the demand for the services provided by victims;
- Cooperate internationally to ensure exchange of experience and help maintain the focus on human trafficking on the international agenda.

In order to meet new developments and challenges, the efforts in the NAPs plans have been regularly supplemented with other initiatives. This, for example, includes a project carried out by a Danish Labour Union, 3F, to develop new methods for outreach work among potential victims of forced labour.

Furthermore, the Committee notes from the report that in order to ensure that prosecutors and police officers are kept informed of the challenges and new patterns of trafficking, the Director of Public Prosecutions ensure that the abovementioned guidelines on how to deal with cases of trafficking in human beings are continuously amended in accordance with new developments in the area. The Director of Public Prosecutions has also made relevant case law on trafficking in human beings available online. Further, the Director of Public Prosecutions addresses issues of trafficking in human beings when relevant, for instance at meetings in the established academic networks where representatives of all police districts and regional prosecutors are present.

The Danish Centre against Trafficking in Human Beings (The CMM) is the core of the nationwide social initiatives under NAP. The CMM is responsible for cooperation and knowledge sharing with authorities, CSOs (Chief Security Officers) and others working in the area.

Denmark does not have a national rapporteur as such in this area, but CMM works as an equivalent mechanism. As part of this, the CMM collects knowledge and statistics on human trafficking, including statistics on the prevalence of trafficking for forced labour. In recent years, there has been an increase in the number of identified victims of trafficking for forced labour from two victims in 2016 and one victim in 2017 to 47 victims in 2018. In 2019 (on September 10th), 15 persons were identified as victims of trafficking for forced labour out of a total of 44 victims. The main part of the victims of forced labour are male.

The number of victims identified in 2018 increased to 46, from 1 identified in 2017 and 2016.

As a consequence of the increase in victims of forced labour, the CMM has focused its attention on gathering knowledge on the needs of victims of trafficking for forced labour, including the different needs that male and female victims might have, and offering relevant support under the NAP for this group.

With regard to private sector engagement to prevent trafficking and discourage the demand for trafficking in human beings, the CMM has participated in an EU-funded multilateral project. The purpose of the project was to map different sectors of the labour market with the aim of enhancing collaboration with stakeholders involved to prepare Corporate Social Responsibility (CSR) guidelines to combat and prevent human trafficking in these sectors.

The CMM has developed a tool, “Managing the Risk of Hidden Forced Labour – A Guide for Companies and Employers”, which serve as a set of guidelines for companies and employers in risk of being associated with forced labour. The guidelines have been prepared in consultation with a number of different stakeholders. They describe the risk of human trafficking leading on to forced labour and how best to avoid being associated with such cases. Furthermore, the guidelines include checklists of a number of measures, which advantageously may be taken by companies to reduce the risk of forced labour in the supply chain.

With funding from The Nordic Council of Ministers, the CMM has initiated a Nordic project on countering trafficking resulting in forced labour. The project received funding in 2016 and is about to be finalised (September 2019). A number of Nordic countries have participated in the project, and the CMM has the role of project manager. The objective of the project is to prevent and counter human trafficking resulting in forced labour in the private and public sector through enhanced initiatives, cooperation, information sharing and expertise within the Nordic countries. As part of the project the CMM has made a version 2.0 of the guidelines mentioned above in Danish and English (Managing the Risk of Hidden Forced Labour – A Guide for Companies and Employers), which was launched at a training session for companies and employers by the CMM in collaboration with The Danish Ethical Trading Initiative in the fall of 2019.

The Committee takes stock of this information and observes that Denmark has put in place a solid institutional framework to comply with the requirements of the Charter on combatting forced labour.

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

The Committee asks that the next report continue to provide information on the data collected, i.e. number of victims, criminal investigations etc.

Protection of victims and access to remedies, including compensation

The report indicates that the binding guidelines from the Director of Public Prosecutions, in the section on trafficking in human beings, set forth instructions to the police and the Prosecution Service on how to deal with cases of trafficking in persons. Clause 2.5 of the guidelines includes guidelines on how to deal with victims of trafficking. Clause 2.5.1 prescribes that the police must always contact the Danish Centre against Trafficking in Human Beings (CMM), in cases where it is suspected that a person has been a victim of trafficking. CMM coordinates the necessary social measures through which the victim may be offered support and help. A person who is assessed to be a victim of human trafficking will be offered support and assistance, also in cases in which the perpetrators will not be charged with violation of Section 262a of the Criminal Code.

The report further indicates that, pursuant to the Administration of Justice Act section 741 (e), the police and the prosecution service inform the victims of, *inter alia*, trafficking in human beings of their legal position, the expected progression of, and important steps in, the case. The information includes information on the victim's right to seek compensation.

According to the Administration of Justice Act section 741 (b), the police must inform the victim of the possibility of being assisted by a court-appointed lawyer. This information must be given prior to the police's first interview of the victim and must be repeated in connection with the second police interview.

According to the Administration of Justice Act section 741 (a), court-appointed lawyers are assigned to victims of, *inter alia*, trafficking in human beings by the court during criminal proceedings unless the victim has declined an attorney. All police districts have a list of lawyers who can be contacted when an attorney needs to be appointed. A court-appointed lawyer's tasks can include explaining the procedures, informing the victim of trafficking about access to psychological and social support and the right to compensation, assisting them in court, handling the compensation claim and providing assistance if the victim applies for asylum or residence. Court-appointed lawyers are assigned free of charge for the victim unless some kind of insurance covers the legal costs.

In addition to that, a victim of human trafficking can be assigned a contact person within the police, if the police consider that the person in question might have to witness in court. The contact person will often be a police officer who gives guidance and information on the rights of the victim of human trafficking and the legal process.

Lastly, the guidelines from the Director of Public Prosecutions, in the section on guidance of the injured person (*vejledning af forurettede*), set forth general guidelines to the prosecutors and to the police on how to inform victims about support services and legal measures available to them. The prosecutor has to inform the victim about the case and guide him/her. The information and guidance should be given regularly and include information about the court

case, the witness's rights and obligations, any possible help throughout the procedure, including the possible support of a court-appointed lawyer.

(Enabling the prosecution of exploiters) A central part of criminal proceedings is the testimony of victims or witnesses. The guidelines from the Director of Public Prosecutions prescribes in the section on Trafficking, clause 2.5.3, that the police and prosecution service must consider at an early stage of investigations in trafficking cases whether to carry out the questioning of the victims in court. If there is a risk that a victim might leave the country before the trial, the prosecution service must carry out the questioning of the victim at an earlier stage in order to secure the witness's statement as evidence in the trial. Still, in principle, the witness must be summoned to give evidence in court during the trial, but if it is not possible to secure the presence of the witness, the prior statement given at an earlier stage may be used as evidence.

(Protection of victims during criminal proceedings) A victim is accommodated in a safe house, in which the victim can stay while legal proceedings are going on. There, the police can interview the victim, fetch the victim for an interview or for identification of possible crime scenes. In several cases, the victims returned to their country of origin before the court case, but they can be brought back to Denmark during the court case. The police are responsible for their accommodation and protection over that period.

Victims of trafficking who do not have a legal residence in Denmark may be granted a temporary residence permit for the purpose of their cooperation with the police and the prosecution service in connection with prosecution proceedings. Pursuant to the Danish Aliens Act section 9 (c) (5), a temporary residence permit may be issued to an alien whose presence in Denmark is required for the purpose of police investigation or prosecution. This type of residence permit will be issued provided that the alien collaborates with the police. The residence permit cannot be renewed for a period longer than the investigation or prosecution period. Not only can victims of human trafficking obtain this permit but also any alien whose presence in Denmark is required for the abovementioned purpose. The victim will receive food and accommodation during the proceedings. CMM covers the expenses for food and housing in these situations. A person who is assessed to be a victim of human trafficking will be offered support and assistance, also in cases in which the perpetrators will not be charged with violation of Section 262 (a) of the Criminal Code.

According to Section 856 of the Administration of Justice Act, the presiding judge may decide that the defendant should not be present while the victim is questioned, if the defendant's presence prevents an unreserved statement from the witness. If the court decides that the witness's name, occupation and address, including the victim's, must not be disclosed to the defendant, the court may also decide that the defendant must leave the court room during the witness's testimony. The decision may be made prior to a trial hearing upon request from the prosecution service, the defence or a witness, including the victim.

The rules regarding in camera in section 29 (a) of the Administration of Justice Act also ensure respect for the victims´ right to safety, privacy and confidentiality during court proceedings.

During the court proceedings, the court can decide that the proceedings will not be open to the public if the victim is considered to be in danger. Section 29 (1) of the Administration of Justice Act further provides for the possibility to hold court proceedings in camera if a public hearing causes somebody to be unnecessarily aggrieved. Moreover, the court can decide that the victim's identity may not be made public.

The courts may decide that the offender has to leave the courtroom while the victim gives testimony, if there is reason to believe that the victim will not be able to give an unreserved testimony with the offender present. Children can give video recorded statements to the courts.

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.

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

Domestic work

There is no information provided in the report on domestic work.

However, the Committee notes from the 2016 GRETA Report that labour inspectors can carry out unannounced inspections also at weekends and can enter private households to check the working conditions of service providers, such as cleaning companies and domestic workers (Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Denmark, Second Evaluation Round, GRETA (2016)7, 10 June 2016). If labour inspectors encounter cases of suspected human trafficking, they inform the police.

The Committee takes note of this information and asks that the next report provide more information on the legal framework on this point in the next report.

"Gig economy" or "platform economy" workers

The report provides information on the measures taken and envisaged to protect gig economy workers.

According to the report, the Danish government decided in 2018 to set up a council on this new work pattern. One of the council's tasks is to provide recommendations to the government on how to support social partners in finding a responsible framework for workers in the gig economy.

Furthermore, the social partners negotiated some of the first collective agreements for gig workers in 2018. The government supported the social partners in their efforts. Nevertheless, due to the Danish labour market model, whereby the social partners regulate pay and working conditions through collective bargaining and agreements. By tradition, the Danish government does not interfere in the collective bargaining system.

The Danish Working Environment Authority (DWEA) is the Danish state body responsible for occupational health and safety and inspects working environment conditions in Denmark. In the Danish labour market, working hours and pay are primarily regulated by collective agreements or individual employment contracts between employers and employees. There are no legal requirements for foreign companies with staff posted in Denmark to enter collective agreements.

Since 2012, funds have been allocated to strengthen joint efforts against social dumping where DWEA, the tax authorities and the police work together to oppose it. The efforts of the authorities are primarily targeted at companies in construction, agriculture, forestry and horticulture, hotels and restaurants, cleaning companies, the car industry and newspaper distribution where experience shows that for instance illegal labour is used.

The following number of joint actions have been carried out from 2015 to 2018. In 2015: 8 national and 38 regional actions; in 2016: 8 national and 36 regional actions; in 2017: 8 national and 36 regional actions; in 2018: 8 national and 36 regional actions.

DWEA carries out daily checks on foreign companies and Danish companies employing primarily foreign labour. Annually, DWEA carries out about 5,500 inspections in relation to social dumping. If inspectors suspect human trafficking or illegal work during an inspection,

they contact the police immediately. DWEA does not have the authority to investigate cases of human trafficking and illegal work.

The Danish Working Environment Act encompasses work performed for an employer. However, certain provisions in the Working Environment Act about the execution of work, the technical equipment, as well as the substances and materials used (the extended area of work) also apply to work that is not performed for an employer, i.e. if the person is self-employed. As for workers in the “gig economy” or “platform economy” the DWEA has not yet taken any specific measures.

The Committee requests that the next report contain information on the concrete measures taken or envisaged to protect workers in the “gig economy” or “platform economy” against all forms of exploitation and abuse. It asks to be informed on the status and rights of these workers (employees or self-employed, or an intermediary category, and their rights in terms of working hours, paid holiday and minimum wage), on whether labour inspection services have any mandate to prevent exploitation and abuse in this particular sector and on any existing remedies they have access to, in particular in order to challenge their employment status.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Denmark is in conformity with Article 1§2 of the 1961 Charter.

Article 1 - Right to work

Paragraph 3 - Free placement services

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

Article 1§3 provides for the right to free employment services. The Committee differed its previous conclusion (Conclusions XXI-1 (2016)), considering that it had no information in its possession on quantitative indicators necessary to assess the effectiveness in practice of free employment services. It noted that the Agency for Labour Market and Recruitment was responsible for the website with a CV bank available to employers and that a match between unemployed and employers could be made without direct contact to the job centre, thus not allowing for the evaluation on the placement rate. The Committee accordingly requested information on the following points, to which the present report provides a detailed response or clarifications:

- number of jobseekers and unemployed persons registered with the Agency for Labour Market and Recruitment;
- number of vacancies notified to the Agency;
- number of persons placed via the Agency; placement rate (placements made by the employment services as a share of notified vacancies);
- average time taken by the Agency to fill a vacancy;
- placements by the Agency as a percentage of total hirings in the labour market;
- respective market shares of public and private services (the market share is measured as the number of placements effected as a proportion of total hirings in the labour market).

Furthermore, the Committee asked for data on: the number of persons working in public employment services (at central and local level); the number of counsellors involved in placement services; and the ratio of placement staff to registered jobseekers, as well as on private employment agencies and how they are licensed, operate and co-ordinate their work with the Danish Agency for Labour Market and Recruitment.

In reply, the report provides statistics indicating a sinking number of jobseekers / persons receiving unemployment benefits (86,454 in 2015 to 79,348 in 2018) and at the same a considerable increase in the number of vacancies (from 11,806 in 2015 to 21,508 in 2018). It again explains that the placement rate is not measured. The Danish employment system solely initiates contact between employers and unemployed jobseekers and job matches are a direct agreement between employers and employees. The Committee asks the next report to indicate, how the effectiveness of the employment services is measured; whether employed jobseekers or filled vacancies unregister from the Agency's job portal and thus assumption on the employment could be made. It notes from the 2016 periodic review report of the OECD Employment, Labour and Social Affairs Committee (Back to work: Denmark: Improving the Re-employment Prospects of Displaced Workers) that the Danish government provides considerable unemployment aid in the way of government programs focused on getting jobseekers back to work and that effective job activation policies have ensured that the period of unemployment suffered by them remains short. As noted by the OECD, "seven displaced workers out of ten get back into work within one year". The Committee asks the next report to comment on this observation and to provide more details on how such results are being measured. It also notes, from the same report, that low skilled and older jobseekers struggle the most to re-enter the labour market and asks what measures are envisaged or put in place to address this aspect.

As regards the number of persons working in public employment services at central and local level, the report recalls that municipalities are directly responsible for implementing and delivering employment services to unemployed jobseekers and to businesses. It further provides that the number of persons working at The Danish Agency for Labour Market at a national level is 407 (as of 2019). The estimate of local staff in the 94 municipalities is 8,600-8,900. The Committee notes that it may respond to the ratio of 8 registered jobseekers per a

staff person of employment service and asks the next report what is the number or share of counsellors involved in placement services within the Agency and the local municipalities. It also notes that the report refers to most current data, which is however, outside the reference period. It observes on the basis of the outside sources, such as the OECD review, quoted above, that the situation was not considerably different before 2019 and asks the next report to confirm that this is the case.

In reply to the Committee's query about private employment agencies, the report states that Denmark's PES model is very decentralized, meaning that municipalities are directly responsible for implementing and delivering employment services to unemployed jobseekers and to businesses. Although regulated by national law and partly nationally funded, the 94 municipal job centres are agencies or departments of the self-governing municipalities. Municipalities may entrust entities other than the job centre itself to perform tasks on behalf of the job centre regarding employment efforts. A job centre can purchase courses, training courses, etc. through third parties. They may be private companies, organizations, other municipalities and unemployment insurance funds. The municipalities are responsible for organizing employment efforts in the job centre, including setting the framework for the involvement of other actors in the job centre and have responsibility for overseeing the actors with whom they have agreements, pursuant to the Act on active employment efforts and the Executive Order and Guidance on other actors.

The Committee notes from the OECD period review, referred to above, that Denmark has effective polices in place to assist quickly people losing their jobs by providing good re-employment support and that it spends more on active labour market programmes than any other OECD country, combined with strong job-search requirements and monitoring. It further notes the OECD recommendation to reinforce training and pre-training counselling and evaluation of training schemes and asks the next report to provide comprehensive information on how the impact of training schemes is measured and whether any developments in this respect took place since 2016.

Conclusion

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

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 Denmark.

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 Denmark 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 vocational guidance (Article 9) (Conclusions XXI-1 (2016)) and to vocational training and retraining of workers (Article 10§3) (Conclusions XXII-1 (2020)).

However, the Committee deferred its conclusion on training for persons with disabilities (Article 15§1) (Conclusions XXII-1 (2020)). Accordingly, the Committee defers its conclusion on Article 1§4.

Conclusion

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

Article 9 - Right to vocational guidance

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

Article 10 - Right to vocational training

Paragraph 1 - 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 Denmark.

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).

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

In Conclusions XXI-1, the Committee noted the entry into force in 2015 of the reform of vocational education and training. In particular, it asked the authorities what measures were taken to ensure that qualifications acquired in general secondary and higher education were geared towards helping students find a place in the labour market.

The report submitted by the authorities indicates that the Danish Agency for the Labour Market and Recruitment employs statistics to monitor the labour market at national and local level. The statistics help to guide training policies so as to match supply with demand.

The Committee takes note of the strategy employed by the authorities to ensure skilling and reskilling for young people and also the unemployed (short- or long-term) in line with market needs (see also the information provided under Articles 10.3 and 10.4).

Measures taken to integrate migrants and refugees

The report submitted by the authorities indicates that under the legislation in force on combating discrimination and promoting equal treatment, the authorities have adopted various measures that indirectly facilitate the integration of migrants and refugees, in particular young people, in vocational education and training (e.g., lessons in Danish as a second language; establishment of a new preparatory basic education and training).

Conclusion

The Committee concludes that the situation in Denmark 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 Denmark.

The Committee notes that Denmark was asked to reply to the specific targeted questions for this provision (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Employment, training and equal opportunities”).

The Committee takes note of the general information included in the report concerning vocational training and vocational guidance schemes for the unemployed, as well as the adult apprenticeship scheme and subsidies offered for the improvement of skills of employed. For example, low-skilled and skilled unemployed people who are members of an unemployment insurance fund have the right to six weeks vocational training during their term of unemployment. This training is mainly offered via the AMU programmes (specifically labour-market targeted courses for low-skilled and skilled workers), which provide participants with skills and competences applicable in the labour market, and are primarily directed at specific sectors and job functions.

Through 11 continuing training and education committees, each responsible for a specific sector of the labour market, social partners play a major role in determining which specific adult vocational training programmes are offered under the programme.

From 2015 onwards, DKK 100 million has been made available to job centres with which to purchase short vocational training programmes for all unemployed persons.

To ensure that these short vocational training programmes are tailored to the demand of the labour market, it is up to the social partners in the eight Regional Labour Market Councils (RAR) to decide what kind of short vocational training programmes job centres are permitted to finance from the additional funding pool.

In addition from 2015, unskilled unemployed people over the age of 30 receiving unemployment benefits have the chance to apply for and complete a vocational training programme (VET). These programmes must be made available within the benefit period of two years, and there must be a specific agreement between the unemployed individual and the PES/job centre.

The Committee requests further information on strategies and measures in place to ensure skilling and re-skilling of workers, in particular as regards digital literacy, new technologies, human-machine interaction and new working environment, use and operation of new tools and machines.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 4 - Encouragement for the full utilisation of available facilities

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

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.

In its previous conclusion (Conclusions XXI-1, 2016), the Committee concluded that the situation in Denmark was not in conformity with Article 10§4 of the 1961 Charter on the ground that non-EEA nationals are subject to a length of residence requirement of two years to be eligible for the State Educational Grant and Loan Scheme (SU).

In response to the Committee's previous conclusion of non-conformity, the report reiterates that under the Education Grant and Loan Scheme, there is a two years' residency requirement before receiving financial support for education and training The residency requirement is combined with either marriage to a Danish citizen or with having had employment involving at least 30 hours of work a week.

The report states that non-Danish nationals who entered Denmark with their parents before the of 20 and resided in Denmark afterwards qualify for financial support for educational and training purposes. The report further states that the majority of foreign nationals, including nationals from non-EU countries, have access to financial support through the Act of Integration of Aliens in Denmark. The latter applies to nationals from non-EU countries that have permanent residence permit or reside lawfully in Denmark in order to acquire permanent residence permit. The Committee asks for further information on this.

The Committee notes that there has been no change to the situation and reiterates its previous conclusion of non-conformity.

In its previous conclusion (Conclusions XXI-1, 2016), the Committee requested updated information on whether time spent on supplementary training at the request of an employer is counted as ordinary working hours, as well as on adequate supervision, in consultation with the employers' and workers' organisations, of the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally. The report does not provide updated information on this point. The Committee, therefore, reiterates its previous request.

Conclusion

The Committee concludes that the situation in Denmark is not in conformity with Article 10§4 of the 1961 Charter on the ground that non-EEA nationals are subject to a length of residence requirement of two years before being eligible receiving financial support for education and training.

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 Denmark.

The Committee previously concluded that the situation in Denmark was not in conformity with Article 15§1 of the 1961 Charter on the ground that it had not been established that effective remedies were guaranteed for persons with disabilities who allege discriminatory treatment in the field of vocational training (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 according "The Danish Public School Act", all children have a right to a satisfactory education offer. Municipalities and schools must offer all students, including students with special needs and disabilities, a teaching provision that meets the student's educational needs, and a school day that is organized in order to take due account of the pupil's special needs and needs for support.

Special needs education and special educational assistance as well as other forms of support are provided following a concrete assessment of the individual's educational needs. Special needs education shall be given to children whose development requires special consideration or support and shall not be given on the basis of the student's disabilities alone.

Referral to special needs education, which is defined as teaching in special schools and special classes and support for at least 9 hours a week in a mainstream school class, takes place following pedagogical psychological counselling and in consultation with the student and the parents.

The Committee previously noted that there was no legislation explicitly protecting people with disabilities from discrimination in education, although Danish legislation on education provides all children with the right to free compulsory education. The Committee noted resolution (B) 43 on equal treatment and equal opportunities for people with and without disabilities adopted in 1993 (Conclusions XXI-1, 2016).

The Committee notes from other sources (Academic Network of European Disability Experts (ANED)) that in June 2018, a general law against discrimination based on disability was adopted. The law prohibits discrimination on grounds of disability, both directly and indirectly. The Act applies to education. The Committee asks for further information on this Act.

As regards the definition of disability the Committee previously asked whether the definition of disability had been amended (Conclusions XX-1 (2016)). 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 in 2017/2018 there were a total of 558,486 children attending compulsory education, 9,280 children with disabilities were educated in special schools, 28,069 children with disabilities in special classes and 1,665 children with disabilities were receiving support for at least 9 hours a week. However the report does not provide figures on the total number of children with disabilities.

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

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

As regards measures in place to address costs associated with education the Committee asks whether children with disabilities 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 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 v. Belgium Complaint No.109/2014, Decision on the admissibility and merits 16 October 2017, International Federation of 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.

The Committee asks that the next report provide information on the implementation of the national disability policy action plan, entitled “One society for everyone” as concerns education for children with disabilities and any other initiatives taken during the reference period to promote the inclusion of pupils with disabilities in mainstream schools.

Remedies

The Committee recalls from its previous conclusion that an independent complaints mechanism exists. The right to complain is reserved to those receiving more than 9 hours of

support per week (this mainly concerns intensive and specialized support). This right does not apply to children who need less than 9 hours' special education per week**.** The Committee asks whether there has been any change to the situation.

The Committee previously concluded that the situation in Denmark was not in conformity with Article 15§1 of the 1961 Charter on the ground that it has not been established that effective remedies were guaranteed for persons with disabilities who allege discriminatory treatment in the field of vocational training. The Committee notes that the Act on the Prohibition of Discrimination in the Labour Market prohibits discrimination on grounds of disability as regards access to vocational training. The Committee further notes that in 2018 a general law against discrimination based on disability was adopted. The law prohibits discrimination on grounds of disability inter alia, in education and training.

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 and training (including access to education, including the provision of adequate assistance or reasonable accommodation) and the relevant case-law. Meanwhile it reserves its position on the issue.

Conclusion

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

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 Denmark.

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

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

Legal framework

The Act on the Prohibition of Discrimination on the Labour Market prohibits discrimination, inter alia, on the ground of disability and prohibits both direct and indirect discrimination during hiring, employment and on termination. Thus, an employer is prohibited from exercising differential treatment in connection with recruitment, dismissal, transferal, promotion, and work and pay conditions. The Act also imposes on employers the obligation to make reasonable accommodation in order to ensure the access to employment for persons with disabilities. An employer has an obligation to adapt a workplace so that an employee with disabilities can perform his or her work on an equal footing with his or her colleagues. The adjustments made available to the employee with disabilities must be effective and practical. Employers' obligation may encompass the physical workplace and work processes.

The Act has not been amended since December 2014.

Access of persons with disabilities to employment

According to the report 52.1% of persons with disabilities (self-reported) were employed in 2016, while 78.9% of persons without disabilities were employed. In 2014, the employment rate among persons with disabilities was 42.6%.

47.9% of persons with disabilities were unemployed 2016, while 21.1% of persons without disabilities were unemployed.

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 2018 a plan to improve and enhance the employment of persons with disabilities in Denmark was adopted and 128 million Danish Kroner made available for it. The plan consists of 11 different initiatives for the period 2019-2022 (outside the reference period). The different initiatives are anchored on 4 principles.

- Less bureaucracy and easier transitions between sectors;
- Targeted and increased efforts to increase employment for persons with disabilities;
- Improvement of opportunities for education;
- More knowledge about disabilities and less prejudice.

Measures envisaged within the framework of the plan include increased focus on persons with disabilities in municipal jobcentres, the establishment of a platform providing information about different kinds of disabilities in relation to employment to jobcentres, public and private employers etc., improving and making internships more flexible, classes for persons with autism spectrum disorder and a pool to which different organizations and private employers

can apply in order to gain funding for projects aimed at integrating and maintaining persons with disabilities on the labour market.

The goal of the plan is to increase the number of persons with disabilities in employment by 13,000 by 2025.

The Committee asks to be kept informed of the outcome of the plan.

Remedies

The law on the prohibition of discrimination on the labour market provides for remedies in cases of discrimination on grounds of disability in employment. the Board of Equal Treatment deals with complaints of discrimination on the grounds, inter alia, of disability under the Act on the Prohibition of Discrimination on the Labour Market etc. The Board is an independent board, and the secretariat for the Board assists individuals in lodging complaints. The Committee asks the next report to provide information on the number of complaints lodged over the reference period.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Denmark 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 notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

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

Paragraph 2 - Simplifying existing formalities and reducing dues and taxes

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

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

Paragraph 3 - Liberalising regulations

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

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

Paragraph 4 - Right of nationals to leave the country

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

Article 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 Denmark.

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

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

Legal framework

In its previous conclusions, the Committee noted that the provisions of the law on equality between women and men concerning access to employment etc. protected men and women against discrimination on the basis of gender in employment and that the Equal Pay Act imposed an obligation to give women and men equal pay, including equal pay conditions, for the same work or work of equal value.

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

Effective remedies

The Committee recalls that domestic law must provide for appropriate and effective remedies in the event of alleged pay discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court. Effective access to courts must be guaranteed for victims of pay discrimination. Therefore, proceedings should be affordable and timely. Anyone who suffers pay discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and to act as a deterrent. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and from being sufficiently dissuasive is contrary to the Charter. The burden of proof must be shifted. The shift in the burden of proof consists in ensuring that where a person believes she or he has suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of non-discrimination (Conclusions XIII-5, Statement of interpretation on Article 1 of the 1988 Additional Protocol). Retaliatory dismissal in cases of pay discrimination must be forbidden. Where a worker is dismissed on grounds of having made a claim for equal pay, the worker should be able to file a complaint for dismissal without valid reason. In this case, the employer must reinstate her/him in the same or a similar post. If reinstatement is not possible, the employer must pay compensation, which must be sufficient to compensate the worker (i.e. cover pecuniary and non-pecuniary damage) and to deter the employer (see in this respect collective complaints Nos. 124 to 138, University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, 5-6 December 2019).

The Committee refers to its previous conclusion concerning Article 4§3 (Conclusions 2018), in which it noted that the cases reported relating to unequal pay were examined in judicial or arbitration procedures or by the Board of Equal Treatment. The Committee asks that the next report contain information on the decisions handed down by the courts and the Board of Equal Treatment regarding gender discrimination in employment and equal pay.

Concerning the burden of proof, the Committee notes from the report that, under Article 6§2 of the Equal Pay Act, the burden of proof is shared in complaints relating to breaches of the principle of equal pay. In particular, according to the report, anyone believing that they are a victim of direct or indirect discrimination presents facts from which it may be presumed that there has been direct or indirect discrimination before the competent court and, in the light of the evidence submitted, it is for the respondent to prove that there has been no breach of the principle of equal treatment. The Committee asks how the principle of shifting of the burden of proof is applied in practice, for example, if it is systematically applied in the cases related to pay discrimination.

On the subject of compensation, the report states that, under Article 2§1 of the Equal Pay Act, a worker whose pay is lower than that of others in violation of the principle of equal pay, is entitled to the difference in pay. According to Article 2§2, a victim of wage discrimination may be awarded compensation. The level of compensation is determined with reference to the length of employment and the specific circumstances of the case. There is no ceiling for the amount of compensation that may be awarded. The Committee asks whether the obligation to compensate the difference of pay is limited in time or is awarded for entire period of unequal pay.

The Committee asks for the next report to state what rules apply in the event of dismissal in retaliation for a complaint about equal pay.

It also asks whether sanctions are imposed on employers in the event of gender pay discrimination.

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

Pay transparency and job comparisons

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

On this point, the report states that there is no government-developed job evaluation system, as the social partners at industry level are better equipped to develop such a system. The Committee notes that, under Law No. 116 of 9 February 2016 amending Article 5a of Law No. 899 on equal pay for men and women, companies employing over 35 workers of whom at least 10 are men and 10 are women (previously – 10 workers or more, of whom at least three were women and three were men) occupying the same post are under obligation to prepare annual pay statistics broken down by gender. The report points out that these statistics promote transparency in the regulating of wages within a company and are a tool for cooperation between management and trade union representatives. However, according to

the report, this law is not applicable when a similar obligation to prepare wage statistics broken down by gender is set out in a collective agreement.

With regard to pay comparisons outside the company, the report points out that the pay levels are regulated by the social partners under collective agreements or individual employment contracts. There may be a number of collective agreements applying to the same sector. While there is no statutory minimum wage, the social partners are bound by the provisions of the Equal Pay Act. Under that law's Article 1§4, they must comply with the principle of equal pay for equal work or work of equal value in their negotiations and conclusion of agreements. At company level, the trade unions (shop stewards) monitor employers' compliance with this principle. The Committee notes from the report that there are some companies which are not covered by any collective agreement.

The Committee also notes that, according to the national report on gender equality in Denmark drawn up by the European Network of Legal Experts in gender equality and non-discrimination (2019), a wage comparator is not required but often used to establish or prove a difference of treatment. The comparators may belong to the same employer or be used more broadly in the different sectors.

The Committee asks that the next report contain information on the notion of "work of equal value" and the criteria for evaluating work of equal value defined in legislation.

Enforcement

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

Obligations to promote the right to equal pay

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

The Committee notes that, according to the report, in 2016 the gross gender pay gap per hour worked in the private sector stood at 11.3%, and the gap in standardised hourly earnings stood at 12.8% (calculated as the difference between average gross hourly earnings of male and female employees as a percentage of the overall gross average earnings; the data do not include the agriculture and fisheries industry or private companies with fewer than 10 employees and relate only to 25-59 year-olds).

In the public sector, at central government level, the gross pay gap per hour worked stood at 2.8% (the gap in standardised hourly earnings at 5.6%), at 15.7% in regional government (the gap in standardised hourly earnings at 22%) and at 2.3% in municipal authorities (the gap in standardised hourly earnings at 6.4%).

Furthermore, the overall gender pay gap stood at 10.2% (the gap in standardised hourly earnings at 14.5%) in 2016.

The Committee notes that, according to Eurostat data, the gender pay gap was 15.1% in 2015 and in 2016, 14.8% in 2017 and 14.6% in 2018 (compared with 17.1% in 2008), slightly below the average of the 28 European Union countries, which was 15% in 2018 (data as of 29 October 2020).

In the light of the above, the Committee considers that in the course of a ten-year period the gender pay gap has not been significantly reduced and hence there has been no measurable progress. Consequently, it finds that the situation is not in conformity with Article 1 of the Additional Protocol to the 1961 Charter on the ground that the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

The Committee asks that the next report provide updated information on the specific measures and actions implemented to reduce the gender pay gap.

Conclusion

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