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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2020

HUNGARY

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 Hungary, which ratified the Revised European Social Charter on 20 April 2009. The deadline for submitting the 10th report was 31 December 2019 and Hungary submitted it on 18 May 2020.

The Committee recalls that Hungary was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to all findings of non-conformity or deferral in its previous conclusions (Conclusions 2016).

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

In accordance with the reporting system adopted by the Committee of Ministers at the 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 persons with disabilities to independence, social integration and participation in the life of the community (Article 15);
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18);
- the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 20);
- the right to protection in cases of termination of employment (Article 24);
- the right of workers to the protection of their claims in the event of the insolvency of their employer (Article 25).

Hungary has accepted all provisions from the above-mentioned group except Articles 18, 24 and 25.

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

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

– 4 conclusions of conformity: Articles 1§1, 10§1, 10§3 and 10§4.

– 6 conclusions of non-conformity: Articles 1§4, 9, 10§5, 15§2, 15§3 and 20.

In respect of the other 3 situations related to Articles 1§2, 1§3 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 Hungary under the Revised Charter.

The next report from Hungary will deal with the following provisions of the thematic group II "Health, social security and social protection":

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 23),

- the right to protection against poverty and social exclusion (Article 30).

The deadline for submitting that report was 31 December 2020.

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

Article 1 - Right to work

Paragraph 1 - Policy of full employment

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

Employment situation

According to Eurostat, the GDP growth rate increased from 3.8% in 2015 to 5.4% in 2018, exceeding the average for the 28 European Union (EU) member States (2% in 2018). In fact, this increase is all the more significant as the rate had dropped to 2.1% in 2016.

The overall employment rate (persons aged 15 to 64 years) rose from 63.9% in 2015 to 69.2% in 2018, slightly exceeding the EU 28 average (68.6% in 2018).

The employment rate for men increased from 70.3% in 2015 to 76.3% in 2018, which is higher than the EU 28 average (73.8% in 2018). The employment rate for women rose from 57.8% in 2015 to 62.3% in 2018, which is slightly below the EU 28 average (63.3% in 2018). The employment rate for older workers (55 to 64-year-olds) increased from 45.3% in 2015 to 54.4% in 2018, which is below the EU 28 average (58.7% in 2018). Youth employment (15 to 24-year-olds) rose from 25.7% in 2015 to 29% in 2018, which is below the EU 28 average (35.3% in 2018).

The overall unemployment rate (persons aged 15 to 64 years) fell from 6.8% in 2015 to 3.7% in 2018, which is below the EU 28 average (7% in 2018).

The unemployment rate for men decreased from 6.6% in 2015 to 3.5% in 2018, which is below the EU 28 average (6.7% in 2018). The unemployment rate for women fell from 7.1% in 2015 to 4% in 2018, which is below the EU 28 average (7.2% in 2018). Youth unemployment (15 to 24-year-olds) decreased from 17.3% in 2015 to 10.2% in 2018, which is below the EU 28 average (15.2% in 2018). Long-term unemployment (12 months or more, as a percentage of overall unemployment for persons aged 15 to 64 years) fell from 45.5% in 2015 to 38.6% in 2018, which is below the EU 28 average (43.4% in 2018).

The proportion of 15 to 24-year-olds “outside the system” (not in employment, education or training, i.e. NEET) fell from 11.6% in 2015 to 10.7% in 2018 (as a percentage of the 15 to 24-year-old age group), which is just above the EU 28 average (10.5% in 2018).

The Committee notes that there was robust economic growth during the reference period, which went hand in hand with favourable developments in the labour market (an increase in the employment rates and falling unemployment). In particular, the overall unemployment rate was very low in 2018. However, employment rates among young people and older workers were still below the EU 28 average.

Employment policy

In its report, the Government states that its goal is to reduce unemployment gradually, bringing it below 3%. To that end, targeted measures have been taken to support employment and to promote activity by disadvantaged persons on the job market. The Government adds that efforts have also been made to improve the structure of the labour market (i.e. by implementing measures to encourage the transfer of a large number of public sector employees to the private sector).

The Committee takes note of the many employment programmes and projects implemented by the Government during the reference period, particularly those intended for people with few or no qualifications, for those living in the regions most affected by unemployment, and for Roma, migrants and refugees. For example, between 2015 and 2019, over 170,000 people took part in the programme entitled "Road to the Labour Market" (2015-2022), which aims to (re)integrate job seekers over 25 years of age with a low level of education into the labour

market, through various services and measures (information, advice, career guidance, training, incentives to work, housing benefit, etc.). In addition, the programme entitled “Reducing the Digital Gap" (2015-2021), which aims to develop digital awareness and literacy skills among disadvantaged groups and in the regions most affected by unemployment, enabled nearly 131,000 people to complete certified training successfully between July 2015 and December 2018.

The Committee also notes that the Youth Guarantee scheme was officially launched in Hungary on 1 January 2015. In this context, various projects were set up throughout the country providing young people under 25 with advice, the possibility of acquiring school or vocational qualifications, employment opportunities, support in setting up a business and assistance with relocation/housing benefit. By the end of 2019, approximately 133,000 young people had taken part in the Youth Guarantee scheme. The Committee requests that the next report provide information both on the number of young people who participated in the scheme and on the results of the programme, particularly the percentage of young people who left it with a “good quality offer” (education, traineeship, employment, etc.) and the percentage of them who were still active (in school, training, employment, etc.) six months after leaving the scheme (broken down according to region).

The Committee also requests that the next report provide information on labour market measures designed to support older workers.

The Committee takes note of the information provided by the Government on monitoring of the effectiveness of active employment policy measures.

The Committee further notes that according to European Commission data, public expenditure on labour market policies (as a percentage of GDP) decreased slightly, from 1.13% in 2015 to 1.08% in 2017 (of which 0.79% was for active measures and 0.22% for passive measures in 2017). It requests that the next report provide information on the activation rate (i.e. the average number of participants in active measures as a percentage of the total number of unemployed).

Conclusion

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

Article 1 - Right to work

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

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

1. Prohibition of discrimination in employment

Article 1§2 of the Charter prohibits all forms of discrimination in employment. The Committee asked the State Parties to provide updated information for this reporting cycle on the legislation prohibiting all forms of discrimination in employment, in particular on grounds of gender (had Article 20 not been accepted), race, ethnic origin, sexual orientation, religion, age, political opinion, disability (had Article 15§2 not been accepted), including information on legal remedies. It furthermore asked to indicate any specific measures taken to counteract discrimination in the employment of migrants and refugees.

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

Hungary has accepted Articles 15§2 and 20 of the Charter. Therefore, it was under no obligation to report on the prohibition of discrimination on grounds of disability and gender, which will be examined under the said provisions.

In its previous conclusion (Conclusions 2016), the Committee concluded that the situation in Hungary was in conformity with Article 1§2 of the Charter, pending information on the concrete measures taken to promote equality in employment and to combat all forms of discrimination, and on the functioning of the equality bodies and on remedies.

As regards the legislation prohibiting discrimination in general terms, the Committee examined the relevant legal framework in its previous conclusion (Conclusions 2016). The cornerstone of the legislation is the general anti-discrimination clause of the Fundamental Law of Hungary adopted in 2011. This general ban is detailed by the comprehensive anti-discrimination law – 2003 Act on Equal Treatment and the Promotion of Equal Opportunities. The law established the Equal Treatment Authority (ETA)– a body responsible for combating discrimination in all sectors and with regard to all grounds. In its previous conclusion, the Committee noted that no programs or projects aimed at implementing the legislation had been developed during the reference period. It asked for information on the concrete measures taken to promote equality in employment and to combat all forms of discrimination in employment. The report does not address the legal framework from the perspective of its implementation in practice. The Committee does recall its request and considers that, should comprehensive information not be provided in the next report, nothing will allow to establish that the situation is in conformity with the Charter in this respect.

Apart from general information on the legal framework prohibiting discrimination, the report does not reply to the Committee's request for information on any specific, targeted legislation and practical measures focused specifically on discrimination on grounds of ethnic origin, race, age, sexual orientation, political opinion or religion. The Committee again asks that the next report provide comprehensive descriptions of how discrimination on these grounds is prevented and combated.

In particular with regard to prohibition of discrimination on grounds of ethnic origin, the Committee wishes to refer to the 2016 report of the European network of legal experts in gender equality and non-discrimination (European Equality Law Network) and to the UN Human Rights Committee 2018 concluding observations on Hungary (Concluding observations (2018) CCPR/C/HUN/CO/6) which indicated that in a number of fields, including employment, social marginalization and discrimination of Roma is still evident. The same concerns were raised in 2019 by the United Nations Committee on the Elimination of Racial Discrimination, in particular about the persistence of structural discrimination against Roma despite the existence of some policies and measures to address such discrimination and about

reports of high levels of unemployment among Roma, and the extreme income gap between them and the rest of society. The Committee therefore asks that the next report include information replying to these comments in particular.

While renewing its request for comprehensive information, the Committee underlines that, should the next report not provide it, nothing will allow to show that the situation is in conformity with the Charter on the above-mentioned points.

As regards specific measures taken to counteract discrimination in the employment of migrants and refugees, the report states that the provisions relating to the employment of migrants are ruled by the 2007 Act on the Admission and Right of Residence of Third-Country Nationals and Government Decrees 114/2007 and 113/2007. They lay down the general conditions for staying longer than ninety days, but not exceeding one hundred and eighty days, while allowing the foreigners policing authority to grant entry and stay exceptionally for the purpose of fulfilling an international obligation, for urgent humanitarian reasons or out of national interest. In general, conditions to grant a residence permit for the purpose of employment are proof of actual work for or under the direction of another person in accordance with their employment relationship, or, as an owner or manager of a business association. Foreign citizens wishing to stay for a period exceeding 90 days with intent to engage in some form of gainful employment must have sufficient resources for themselves and their family members in order not to become a burden on the social assistance system during their period of stay, and have comprehensive sickness insurance cover for health-care services as prescribed in specific other legislation.

The Committee considers that the information provided does not allow for a comprehensive assessment of the prevention and prohibition of discrimination of foreigners in employment. In particular, information on the protection of persons requiring international protection is insufficient. In this respect, it notes that the UN Human Rights Committee (Concluding observations (2018) CCPR/C/HUN/CO/6) points out to the negative impact of the major legislative reforms on migration over the past few years, in particular the law adopted in March 2017, which authorises the automatic expulsion of all asylum applicants to transit areas for the duration of their asylum process. Moreover, the European Equality Network in its abovementioned report, criticised the active campaign that has been carried out against migrants and helpers of migrants by the Hungarian Government since 2015, which resulted in a public attitude that is not conducive to the idea of diversity and non-discrimination. Similar criticism has been raised by the European Commission against Racism and Intolerance (ECRI) in its 2018 conclusions on Hungary and by a joint opinion of the European Commission for Democracy through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights on the provisions of the so-called “Stop SOROS” legislative package.

The Committee thus requests that the next report comprehensively describe the legal framework and practical measures aimed at prohibiting and combating discrimination of migrants and refugees in the field of employment. It considers that, should the requested information not be provided in the next report, nothing will allow to establish that the situation is in conformity with Article 1§2 of the Charter on this point.

The Committee recalls that appropriate and effective remedies must be ensured in the event of an allegation of discrimination. The notion of effective remedies encompasses judicial or administrative procedures available in cases of an allegation of discrimination, an appropriate adjustment of the burden of proof which should not rest entirely on the complainant, as well as the setting-up of a special, independent body to promote equal treatment.

The Committee noted in its previous conclusion the limited powers of the ETA authority, in particular as regards compensation for victims of discrimination. It asked for comprehensive information on remedies in discrimination cases and whether there were limits to the amount of compensation which may be awarded by courts in discrimination cases. It further noted an unwillingness of the Authority to impose fines on perpetrators, especially when respondents

are state or local council entities. It requested information on the outcomes in cases of discrimination in employment dealt with by the ETA when the respondents are state or local council entities, as well as on the ETA activities as regards raising awareness of the prohibition of discrimination in employment, and on the Authority's scope of activity.

The report does not provide a comprehensive answer to the Committee's queries. It recalls the legal framework, and states that as of 2018, no administrative appeal is available in the proceedings before ETA. The Committee notes that the European Equality Network in its above-mentioned report points out that the Equal Treatment Authority carries out very few procedures *ex officio*, mainly due to a lack of staff and funding, and it expressed doubts whether the authority can maintain some of its very important core functions.

The Committee again asks that the next report provide comprehensive information with respect to remedies, including: on the role and functioning of the equality bodies, on application of the Act on Equal Treatment and the Promotion of Equal Opportunities by courts, including statistics on the number of court cases concerning discrimination. It also asks whether the procedure is easily accessed, including an appropriate adjustment of the burden of proof, costs, representation, and information on the levels of compensation awarded, the NGOs' participation and what sanctions may be imposed. It also asks how violations of the legal provisions prohibiting discrimination in the workplace are scrutinised, whether adequate penalties exist and if so, whether they are effectively enforced by labour inspectors. It considers that, should the requested information not be provided in the next report, nothing will allow to establish that adequate and appropriate remedies exist, as required by Article 1§2 of the Charter.

2. Forced labour and labour exploitation

The Committee recalls that forced or compulsory labour in all its forms must be prohibited. It refers to the definition of forced or compulsory labour in the ILO Convention concerning Forced or Compulsory Labour (No.29) of 29 June 1930 (Article 2§1) and to the interpretation given by the European Court of Human Rights of Article 4§2 of the European Convention on Human Rights (*Van der Mussele v. Belgium*, 23 November 1983, § 32, Series A no. 70; *Siliadin v. France*, no. 73316/01, §§ 115-116, ECHR 2005-VII; *S.M. v. Croatia* [GC]*,* no. 60561/14, §§ 281-285, 25 June 2020). The Committee also refers to the interpretation by the Court of the concept of « servitude », also prohibited under Article 4§2 of the Convention (*Siliadin,* par. 123; *C.N. and V. v. France,* par. 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,* par. 89 and 112). Moreover, positive obligations under Article 4 of the European Convention must be construed in the light of the Council of Europe Convention on Action against Trafficking in Human Beings (ratified by almost all the member States of the Council of Europe) (*Chowdury and Others v. Greece,* § 104, 30 March 2017). Labour exploitation in this context is one of the forms of exploitation covered by the definition of human trafficking, and this highlights the intrinsic relationship between forced or compulsory labour and human trafficking (see also paragraphs 85-86 and 89-90 of the Explanatory Report accompanying the Council of Europe Anti-Trafficking Convention, and *Chowdury and Others,* § 93). Labour exploitation is taken to cover, at a minimum, forced labour or services, slavery

and servitude (GRETA, *Human Trafficking for the Purpose of Labour Exploitation*, Thematic Chapter of the 7th General Report on GRETA's Activities (covering the period from 1 January to 31 December 2017), p. 11).

The Committee draws on the case law of the European Court of Human Rights and the above-mentioned international legal instruments for its interpretation of Article 1§2 of the Charter, which imposes on States Parties the obligation to protect effectively the right of the worker to earn his living in an occupation freely entered upon. Therefore, it considers that States Parties to the Charter are required to fulfil their positive obligations to put in place a legal and regulatory framework enabling the prevention of forced labour and other forms of labour exploitation, the protection of victims and the investigation of arguable allegations of these practices, together with the characterisation as a criminal offence and effective prosecution of any act aimed at maintaining a person in a situation of severe labour exploitation. The Committee will therefore examine under Article 1§2 of the Charter whether States Parties have fulfilled their positive obligations to:

- Criminalise and effectively investigate, prosecute and punish instances of forced labour and other forms of severe labour exploitation;
- Prevent forced labour and other forms of labour exploitation;
- Protect the victims of forced labour and other forms of labour exploitation and provide them with accessible remedies, including compensation.

In the present cycle, the Committee will also assess the measures taken to combat forced labour and exploitation within two particular sectors: domestic work and the "gig economy" or "platform economy".

The Committee notes that the national authorities have replied partially to the specific, targeted questions for this provision on exploitation of vulnerability, forced labour and modern slavery (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities").

Criminalisation and effective prosecution

The Committee notes from the national report that forced labour is criminalised under Section 193 of Act C of 2012 on the Criminal Code, which also criminalises the unlawful employment of third-country nationals without authorisation to undertake gainful employment under particularly exploitative working conditions, or to the detriment of whom human trafficking has been committed. The Committee further notes that Section 192 of the Criminal Code criminalises human trafficking for the purpose of exploitation (see Conclusions 2016 and GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Hungary, Second Evaluation Round, GRETA (2019)13, 27 September 2019, par. 157). Exploitation shall mean the abuse of power or of a position of vulnerability for the purpose of taking advantage of the victim forced into or kept in such a situation. There are no provisions on slavery or practices similar to slavery and servitude. The Committee notes that GRETA urged the Hungarian authorities to include slavery and practices similar to slavery and servitude in the definition of trafficking in human beings in the Criminal Code (par. 163).

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

The Committee notes that GRETA expressed concerns about the inadequate criminal justice response to human trafficking in Hungary. It particularly urged the authorities to strengthen

efforts to investigate and prosecute cases of trafficking for the purpose of labour exploitation (GRETA Report, par. 190).

The Committee asks that the next report provide information on the application in practice of the criminal law provisions related to forced labour and labour exploitation, particularly Sections 192 and 193 of the Criminal Code. The report should provide information (including statistics and examples of case law) on the prosecution and conviction under those provisions during the next reference period, in order to assess how the legislation is interpreted and applied to combat forced labour and labour exploitation. The Committee also asks whether slavery and practices similar to slavery and servitude have been criminalised as such.

Prevention

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

The Committee notes from the report that in order to implement the measures set out in the Government Resolution 1125/2019 (13 March) on the Necessary Measures Needed to Increase the Effectiveness of the Fight Against Trafficking in Human Beings (outside the reference period), the Chief Commissioner of the Hungarian National Police approved an Action Plan, which is being implemented continuously. During this process an e-learning curriculum is being established and a national awareness campaign ("Be aware!") will continue. The key objectives of the Action Plan are to identify the victims and to fully enforce their rights from the filing of the complaint to the completion of the investigation. In addition, the National Directorate-General for Aliens Policing provided training on the successful identification of victims of trafficking to the administrative staff who regularly come across third-country nationals who may have been trafficked. Further guidance is provided in the handbook titled "Guide to identifying foreign victims of trafficking in human beings".

The Committee asks that the next report provide information on the implementation of the abovementioned Action Plan and on its impact in preventing forced labour and labour exploitation, indicating whether the objectives set out in the plan have been achieved.

The Committee notes that no information is provided in the report on labour inspectors and their role in detecting victims of forced labour or labour exploitation. It notes in this regard that GRETA considered that the Hungarian authorities should make further efforts to prevent trafficking in human beings for the purpose of labour exploitation, in particular by ensuring that continuous training is provided to labour inspectors to enable proactive identification of victims of human trafficking. GRETA also estimates that labour inspections should be properly resourced and targeted at economic sectors with a heightened risk of human trafficking, including agriculture (GRETA Report, par. 58). The Committee therefore requests that the next report provide detailed information on specific actions carried out by labour inspectors with a view to detecting cases of forced labour and labour exploitation, particularly in sectors such as agriculture, construction and hospitality, including information related to resources and training. The report should also indicate the number, if any, of presumed victims of forced labour or labour exploitation detected as a result of labour inspections.

No information has been provided in the report on whether Hungarian legislation includes measures designed to force companies to report on action taken to investigate forced labour and exploitation of workers among their supply chains and requires that every precaution be taken in public procurement processes to guarantee that funds are not used unintentionally to

support various forms of modern slavery. The Committee accordingly reiterates its request on this point.

Protection of victims and access to remedies, including compensation

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

The current report states that victims are informed, both verbally and in writing (by the victim support service), with regard to the procedure and the availability and accessibility to the victim support state service. The Committee takes note of the general information provided relating to victims requiring special treatment in criminal proceedings, according to the circumstances of their personality and living conditions, the nature of the crime and the circumstances of the offence.

As regards victims of trafficking in human beings for the purpose of labour exploitation, the Committee notes from the abovementioned GRETA Report that, according to the applicable regulations, written consent from the presumed victim is required before s/he can be officially identified as a victim of trafficking, and assisted (pars. 85, 90, concerning in particular labour exploitation). GRETA urged the Hungarian authorities to remove this requirement (par. 97).

The Committee asks that the next report clarify whether presumed victims of forced labour and labour exploitation have access to support and assistance measures without having to give any written consent to the authorities. In this context, it requests information on the number of presumed victims of forced labour and labour exploitation and the number of such victims benefiting from protection and assistance measures. The Committee also asks for general information on the type of assistance provided by the authorities (protection against retaliation, safe housing, healthcare, material support, social and economic assistance, legal aid, translation and interpretation, voluntary return, provision of residence permits for migrants) and on the duration of such assistance.

The Committee asks for confirmation in the next report that the existing legal framework provides the victims of forced labour and labour exploitation, including irregular migrants, with access to effective remedies (before criminal, civil or labour courts or other mechanisms) designed to provide compensation for all damage incurred, including lost wages and unpaid social security contributions. The Committee also asks for statistics on the number of victims awarded compensation and examples of the sums granted.

Domestic work

The Committee reiterates that domestic work may give rise to forced labour and exploitation. Such work often involves abusive, degrading and inhuman living and working conditions for the domestic workers concerned (see Conclusions 2012, General Introduction, General Questions, and the Court's judgment in *Siliadin v. France*). States Parties should adopt legal provisions to combat forced labour in the domestic environment and protect domestic workers as well as take measures to implement them (Conclusions 2008, General Introduction, General Question). The Committee recalls that under Article 3§3 of the Charter, inspectors must be authorised to inspect all workplaces, including residential premises, in all sectors of activity (Conclusions XVI-2 (2003), Czech Republic, relating to Article 3§2 of the 1961 Charter; Statement of Interpretation of Article 3§3 (i.e., Article 3§2 of the 1961 Charter)). It considers that such inspections must be clearly provided for by law, and sufficient safeguards must be put in place to prevent risks of unlawful interferences with the right to respect for private life.

In its previous conclusion (Conclusions 2016), the Committee noted that the Labour Inspection Act did not authorise inspections of private households which employ domestic workers**.** The Committee notes however from the abovementioned GRETA Report that the Labour Inspection Act was amended in 2017, enabling labour inspectors to carry out on-site

inspections in private homes as of 1 January 2018 (par. 54). No information is provided on this issue in the national report.

The Committee asks that the next report indicate the number of inspections carried out in respect of domestic workers during the next reference period, and the number, if any, of the victims of forced labour and labour exploitation identified as a result.

Gig economy" or "platform economy" workers

The Committee takes note of the information provided in the report concerning the Hungarian legislative framework applicable for determining the existence of an employment relationship (Chapters 7 and 8 of the Labour Code). The report states that the activities of the collaborative or "platform" economy can be carried out independently, primarily in the form of a self-employment relationship, or as a private individual with a tax number. In these cases, the parties enter into a civil law contract for the performance of the activity. But if the parties conclude a civil law contract for essentially the same tasks as the content of an employment contract, their legal relationship shall be classified as an employment relationship. The Labour Inspection is empowered to determine the existence of an employment relationship on a case-by-case basis, according to the criteria established by the Labour Code.

The Committee asks for detailed information in the next report on the number of inspections carried out by the Labour Inspection in respect of "platform" or collaborative economy workers, and the number of employment relationships detected as a result of those inspections. It also asks whether these workers have access to remedies to challenge their employment status and /or abusive working conditions.

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

Conclusion

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

Article 1 - Right to work

Paragraph 3 - Free placement services

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

During the reporting period, the structure of the Hungarian public administration, including the public employment organisation, remained unchanged. However, with regard to labour market services, there were some changes.

In 2015, the Hungarian State-run jobseeking organisation, the National Employment Service (NFSZ), had 4,333 employees, of whom 3,082 dealt directly with jobseekers. In December 2015, the closing monthly headcount included 337,500 registered jobseekers. The officer to client ratio is approximately 1 per 109, with a cumulative ratio of 1 per 389 (based on returning client traffic). The proportion of successful mediation in categories 1 and 2 based on profiling introduced in January 2016 is 46.9%; 76.7% in public employment category 3; and 69.3% in all categories combined. According to recruitment data, 66% of jobseekers contacted the NFSZ, while only 35% contacted private-sector recruiters. According to the MEF data, the NFSZ executed 21% of all placements.

The Committee noted that, according to the European Commission country report on Hungary of 2019, based on data of 2018, “the efficiency of public employment services could be improved. The caseload for many jobcentres exceeds their capacity and caseworkers are overloaded with administrative duties (Hétfa, 2018), leaving less time for individualised assessment (…) Using quotas for active labour market policies still greatly influences profiling outcomes, which impairs the efficiency of job matching. The monitoring of the quality of training programmes remains limited.”

The Committee also noted that, while the report contained some information on the number of jobseekers per placement counsellor up to January 2016, there is still information missing. The Committee reiterates its question on obtaining a comprehensive description of the organisation and functioning of public employment services throughout the country. In particular, it asks that this description contains specific information on the following indicators: a) placement rate (i.e. placements made by the employment services as a share of notified vacancies), and b) respective market shares of public and private services (market share is measured as the number of placements effected as a proportion of total hirings in the labour market). The Committee further requests information on the possibility of participating in the organisation and running of the employment services of trade union and employers’ organisations.

Conclusion

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

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 Hungary.

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

The Committee considered the situation to be in conformity with the Charter as regards measures concerning vocational training and retraining of workers (Article 10§3) (Conclusions 2020) and vocational training for persons with disabilities (Article 15§1) (Conclusions 2016).

The Committee however considered that the situation was not in conformity with the Charter as regards measures concerning vocational guidance (Article 9) on the ground that it had not been established that the right to vocational guidance in the labour market was guaranteed (Conclusions 2020). Accordingly, the Committee considers that the situation is not in conformity with Article 1§4 of the Charter on the same ground.

Conclusion

The Committee concludes that the situation in Hungary is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that the right to vocational guidance in the labour market is guaranteed.

Article 9 - Right to vocational guidance

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

The Committee recalls that in its letter requesting national reports it stated that no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

Vocational guidance within the education system

In its previous conclusion (Conclusions 2016), the Committee noted that vocational guidance in the education system is provided in the framework of the regular curriculum and that, in addition, information is available to students through other information tools, notably online, and special events. It took also note of the important measures taken to further develop and improve vocational guidance during the reference period. However, the Committee noted that the report did not provide the repeatedly requested figures on expenditure, staffing and the number of beneficiaries of vocational guidance in the education system. It accordingly reiterated its request. In the meantime, it deferred its conclusion.

The current report indicates that the career orientation activities operating within the public education system are present on two levels: at the level of educational institutions and at the level of pedagogical service institutions.

As regards educational institutions, in addition to the vocational guidance provided in the framework of the regular curriculum, the report indicates that during the school year the institutions may use six to eight working days to design and implement informal non-teaching activities with a career orientation focus.

At another level, pedagogical services institutions provide further education and career guidance through specialised phycologist counsellors and career guidance counsellors in order to help the student to make an informed decision. According to the report, such institutions offer individual and personalised counselling, as well as group counselling and career choice guidance services. The report provides figures on the number of beneficiaries of such services over the reference period (12,456 in 2015/2016, 13,669 in 2016/2017 and 15,768 in 2017/2018). It further provides data on the number of experts involved in these services during the same period (82 in 2015/2016, 68 in 2016/2017 and 72 in 2017/2018).

As for the expenditure for vocational guidance services, the report indicates that school district centres maintaining state-owned county (capital) pedagogical services operate with a budget received from the central budget. In the case of non-state-run institutions, providers may claim subsidies, depending on the number of children and students provided for.

The Committee takes note from the report of the establishment of the Graduate Career Tracking System (DPR), which takes record of the careers of university and college graduates in order measure and compare the impact of higher education institutions in the labour market. It also takes note of several projects developed in Hungary within the Europe 2020 Strategy to improve career orientation activities within the education system.

While taking note of the above-mentioned information, the Committee notes that the report does not specify what is the amount of the budget allocated to vocational guidance services within the education system, whether in educational or psychological services institutions. It also notes that no information on the qualification and number of the staff involved in vocational guidance in the educational institutions is provided, nor on the ratio between the number of such staff and the number of students. The Committee recalls that vocational guidance must be provided by qualified (counsellors, psychologist, and teachers) staff and with an adequate budget. It therefore asks the next report to provide such information. In the meantime, it reserves its position on this point.

Vocational guidance in the labour market

In its previous conclusion (Conclusions 2016), the Committee asked the next report to contain figures on the expenditure, staffing and the number of beneficiaries of vocational guidance in the labour market. In the meantime, it deferred its conclusion.

The Committee notes that the current report contains very limited information on vocational guidance in the labour market (under Article 1.1) and that no answers to its questions are provided. The Committee recalls that vocational guidance must be provided by qualified (counsellors, psychologists and teachers) and sufficient staff, to a significant number of persons, by aiming at reaching as many people as possible and with an adequate budget. The Committee accordingly reiterates its requests and, given the repeated lack of information on these issues, considers that the situation in Hungary is not in conformity with Article 9 of the Charter on the ground that it has not been established that vocational guidance in the labour market is guaranteed.

Conclusion

The Committee concludes that the situation in Hungary is not in conformity with Article 9 of the Charter on the ground that it has not been established that the right to vocational guidance in the labour market is guaranteed.

Article 10 - Right to vocational training

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

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

The Committee refers to its previous conclusions for a description of the situation that it found to be in conformity with the Charter (see Conclusions 2016). The Committee notes that decrees from 2012 and 2016 have clarified the content of the framework curricula and curricula for each vocational training course, while a decree from 2016 lays down the admission requirements for training.

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

According to the information provided by the authorities, the reform of the vocational training system that came into force in 2013 both halved the number of vocational training qualifications (from 1 303 to 632) and also increased the norms (by 20% to 25% on average) within each of the newly defined vocational qualifications, thereby expanding the areas covered. The relevant norms are now fully integrated in vocational training programmes.

The Committee notes the establishment of "Sectoral Skills Councils", bodies designed to ensure that the educational content required for cutting-edge technologies is continuously reflected in vocational training and education.

44 vocational training centres, which group together a network of some 340 vocational training institutions, ensure greater co-ordination and the adaptation of the teaching provided to match the needs of the labour market. The dual approach adopted in vocational training has led to closer co-ordination between state-run vocational training centres and companies providing practical training, in particular through the reinstatement of the practical training leadership position. These measures allow for more direct information flows, while improving the efficiency of the training and raising its quality.

The raising of the age limit for full-time training (from 21 to 25 years) has also enabled larger numbers of people to take part.

The Committee notes the expansion of the scholarship scheme supporting the obtaining of vocational qualifications in sectors in shortage and the measures to promote the participation of disadvantaged people in vocational training under the National Social Inclusion Strategy.

According to the information provided under Article 1§1, programmes co-financed by the European Social Fund and the Youth Employment Initiative allow the provision of vocational training aimed at entrepreneurship or training courses designed to help young people with vocational qualifications to acquire experience for employment or entrepreneurship.

Programmes to certify occupation-relevant skills (e.g. TÁMOP project; Priority Project: Training of the low-skilled and people in public employment) for low-skilled/unskilled individuals increase their opportunities on the labour market, primarily in line with local and national labour market needs.

Measures taken to integrate migrants and refugees

According to the information provided under Article 1§1, between 2015 and 2018, measures to support the integration of refugees and migrants in the labour market were implemented with the support of the Asylum, Migration and Integration Fund. The authorities indicate that they funded 10 projects in this connection, for a total cost of approximately EUR 810 000 (75% with national funding and 25% with European funding).

The 10 projects presented by the authorities were aimed, in particular, at encouraging:

- the development and operation of training programmes and services for third-country nationals, in line with the needs of the labour market;

- the development of specific tools (such as the provision of health care or interpretation and translation services for training and service activities) so as to increase the employability of vulnerable groups, in particular persons granted international protection;
- the development of entrepreneurial skills among migrants and the provision of assistance;
- Hungarian language training for third-country nationals attending Hungarian higher education establishments.

The Committee asks the authorities to indicate whether Hungarian language training is provided automatically for refugees and nationals of other States Parties lawfully resident in Hungary who wish to enter the labour market.

The authorities are asked to indicate whether there is a specific support programme for young migrants aimed at fostering their social, linguistic and educational integration and ensuring transition from school to work.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Hungary is in conformity with Article 10§1 of the Charter.

Article 10 - Right to vocational training

Paragraph 2 - Apprenticeship

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

Article 10 - Right to vocational training

Paragraph 3 - Vocational training and retraining of adult workers

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

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

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

The Committee notes from the report that there are programmes in place, co-financed by the European Union, aiming to enhance employees' skills. In particular, the GINOP 6.1.2.-15 programme seeks to reduce the digital gap, the GINOP 6.1.4-16, launched in 2017, targets persons aged between 16 to 64 with low education and outdated vocational qualifications and is implemented in 6 regions of Hungary. Among others, this programme supports participants in digital industry short cycle training programs and self-employed or owners of small or medium sized enterprises to use new technologies and improve their digital competences. Further the report refers to the programme GINOP 6.1.5. – 17, launched in 2018, which targets low-income employees in large companies and aims at the implementation of the Industry 4.0. goals. Finally, the report provides information on the programme GINOP 6.1.6.-17, launched in 2018, on the training of employees in small and medium-sized enterprises. This programme targets low-income employees and is implemented in 6 regions. The Committee, having taken note of the programmes under implementation, asks the next report to provide more detailed information on the programme GINOP 6.1.4.-16, which aims to reduce the digital gap, as well as on the particular skills related to digital literacy, new technologies, human-machine interaction and new working environments, use and operation of new tools and machines, acquired under the programme GINOP 6.1.6.-17 on the training of employees in small and medium enterprises**.**

According to the National Statistical Data Collection Program, between 2015 and 2018, an average of 1.5 million people participated in adult education each year.

Conclusion

Pending receipt of the information requested the Committee concludes that the situation in Hungary is in conformity with Article 10§3 of the Charter.

Article 10 - Right to vocational training

Paragraph 4 - Long term unemployed persons

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

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

The Committee notes that no information on this issue was provided in the report.

However the Committee notes from the information provided under Article 1.1 of the Charter that the share of long-term job seekers among job seekers ranged from 26.9% to 28.5% between 2015 and 2018, the lowest in 2015 and 2018, the highest in 2016.

The majority of the long term unemployed are over 55 years of age. Among young job seekers under the age of 25, the share of long-term job seekers was the highest in 2015, at 10.5%, while in 2017, it dropped to 8.9%.

Among those involved in labour market training, the proportion of long-term job seekers increased in the four years surveyed. In 2015, 17.0% of those involved in training were long-term job seekers, while in 2012 it was 12.2%.

The Committee notes from other sources EUROSTAT that the long term unemployed constituted 38.6% of all unemployed persons. The Committee notes that the rate has fallen during the reference period, and is below the EU average.

The Committee asks the next report to provide information on the nature and extent of special retraining and reintegration measures taken to combat long-term unemployment.

In its previous conclusion (Conclusions 2016) The Committee asked whether equal treatment with respect to access to training and retraining for long-term unemployed persons is guaranteed to non-nationals.

It notes from the report that access to vocational training, including for non-nationals, is governed by Section 39 (1) of Act CCIV of 2011 on National Higher Education, which guarantees the right to undertake studies in programmes fully or partially financed through scholarships granted by the Hungarian State. The equal treatment requirement must be guaranteed throughout the vocational training process. Under Act CLXXXVII of 2011 on Vocational Education, a body falling within the scope of this Act, which violates the requirement of equal treatment, may be prohibited from participating in vocational training.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Hungary is in conformity with Article 10§4 of the Charter.

Article 10 - Right to vocational training

Paragraph 5 - Full use of facilities available

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

The Committee recalls that in its letter requesting national reports it stated that no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

The Committee previously concluded that the situation in Hungary was not in conformity with Article 10§5 of the Charter on the ground that it has not been established that equal treatment of nationals of other States Parties lawfully resident in Hungary is guaranteed as regards financial assistance for vocational education and training

The Committee notes that the report does not provide an answer to this question. It therefore requests that the next report provide information on whether equal treatment of non-nationals lawfully residing or regularly working in Hungary is guaranteed with respect to fees and financial assistance for vocational education and training and in the meantime reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Hungary is not in conformity with Article 10§5 of the Charter on the ground that it has not been established that equal treatment of nationals of other States Parties residing or working lawfully in Hungary is guaranteed as regards financial assistance for vocational education and training.

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

Paragraph 1 - Vocational training for persons with disabilities

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

The Committee previously concluded that the situation in Hungary was not in conformity with Article 15§1 of the Charter on the ground that it had not been established that the right of persons with disabilities to mainstream education was effectively guaranteed (Conclusions 2016).

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

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

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

Legal framework

According to the report the special educational needs of children are determined by expert committees which make recommendations as to the type of educational institution a child should attend (inclusive or special) and the type of assistance to be provided to the child. The Act on National Public Education (Act 190 of 2011) provides that children with special educational needs (SEN) may benefit from the assistance of a special education teacher, a modified curriculum, technical aids, additional time for examinations etc.

The expert committee may propose and designate only an institution which has the necessary facilities and conditions to provide for a student with SEN.

According to other sources (Academic Network of European Experts on Disability (ANED)) the Equal Opportunities Act (26 of 1998) in Article 13 provides that: (1) 'It is the right of a person with disability to take part in early development and care corresponding to his or her condition and depending on age, to kindergarten training, school training and education and development preparation for such education, in keeping with the provisions of the Act on Public Education'; (2) "If it is advantageous for the development of the capabilities of the person with disability – in keeping with the opinion of the expert and rehabilitation committee set up for this purpose – the person with disability shall take part in kindergarten training and school education together with other children and pupils, in the same kindergarten group or school class".

The Committee previously requested information on the definition of disability (Conclusions 2016). The report states that the amendment of Act XXVI of 1998 on the Rights and Equal Opportunities of Persons with Disabilities adopted in 2013, amended the legal definition of a person with a disability. Section 4 provides that "a disabled person is a person who, durably or permanently, suffers from sensory, communication, physical, mental, psycho-social impairment, or any combination thereof which, in interaction with environmental, social and other significant barriers, restricts or prevents their effective and equal participation in society".

The Committee has previously stressed the importance of moving away from a medical definition of disability towards a social definition. An early example is that endorsed by the

World Health Organisation in its International Classification of Functioning (ICF 2001) which focuses on the interaction of health conditions, environmental factors and personal factors.

Article 1 of the UN Convention on the Rights of Persons with Disabilities (CRPD) crystallises this trend by emphasizing that persons with disabilities include those with long term disabilities including physical, mental or intellectual disabilities which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Importantly, this means there is no a priori exclusion from inclusive education based on the type of disability. Indeed, Article 2 of the CRPD which prohibits discrimination “on the basis of disability” may be read to go further by including those who have had a record of disability in the past but who continue to be treated negatively and those who never had a disability but may nevertheless be treated by others as if they had a disability (the so-called "attitudinally disabled").

The Committee therefore asks the next report to clarify whether the assessment of ‘disability’ in the fields of education and vocational training takes into account the personal and environmental factors interacting with the individual. These factors are particularly relevant when it comes to an assessment of "reasonable accommodation".

Access to education

The Committee previously concluded that the situation was not in conformity with the Charter on the grounds that it had not been established that the right of persons with disabilities to mainstream education was effectively guaranteed (Conclusions 2106).

According to the report there has been an increase in the number of children and students with special educational needs due to improved diagnosis and better screening for SEN, and due to the fact that students with special educational needs no longer drop out of school, but continue their public education studies.

The report states that the number of students with SEN in primary education increased from 53,577 to 55,322 between 2015 and 2018, However, the proportion of children with SEN in integrated education increased from 69% to 71% (compared to 49% in 2005).

The number of students with SEN in upper secondary education has also increased, according to the report, but this is due to the fact that more students do not drop out of school, and continue their education. There has been an increase in the number of children with SEN in inclusive secondary schools (typically with non-mental disabilities) between 2015 and 2018:

- high schools: 2,431 students in 2015, 2,967 students in 2018.

- general and vocational high schools: 5,345 students in 2015, 5,858 students in 2018.

- vocational high schools: 7,043 students in 2015, 7 ,594 students in 2018.

There was no significant change in the number of students attending special education secondary schools (vocational schools or skills development schools and typically including those with mental disabilities) between 2015 and 2018 (7,159 in 2018, 7,146 in 2015).

The number of students with special educational needs participating in secondary education (inclusive and special) was 21, 965 in 2015/2016 and 22,712 in 2017/2108.

According to data provided in the European Agency Statistics on Inclusive Education (EASIE) 2018 Dataset Cross-Country Report, in primary and lower secondary schools providing compulsory education), 66.84% of children recognised as having SEN were in inclusive education, and 33.16% in special classes.

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.

According to the report children with SEN are entitled to free textbooks and the reimbursement of travel costs associated with using special pedagogical services. The Committee asks whether SEN children are entitled to any other financial support to cover any additional costs that arise to ensure the removal of obstacles to their inclusion in education.

Measures aimed at promoting inclusion and ensuring quality education

The report states that educational pedagogical services established at county level provide, inter alia, special education counselling, speech therapy, and other support services to children with SEN.

Special modified curriculums have been prepared for children with mild to moderate intellectual disabilities; for other children with SEN, modifications of the National Core Curriculum and other mainstream curriculums, as well as methodological guidelines and guides have been developed. New curriculums have been adopted over the reference period for special vocational schools aiming at assisting children with intellectual disabilities enter employment.

According to the report traditional teacher training ensures that all teachers have the basic knowledge needed to educate children and students with special educational needs and multiple disabilities both in inclusive settings and special schools.

A network of mobile (travelling) special education teachers has been also developed. Currently more than 9,500 professionals are employed in special education training and pedagogical service institutions (as opposed to 5,700 in 2010, 7,000 in 2015).

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

The Committee has recognised that “integration” and “inclusion” are two different notions and that integration does not necessarily lead to inclusion (Mental Disability Advocacy Centre (MDAC) v. Belgium, Complaint No.109/2014, Decision on the admissibility and merits 16 October 2017, International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium Complaint No. 141/ 2017, Decision on the merits of 20 September 2020). The right to an inclusive education relates to the child’s right to participate meaningfully in mainstream education.

The Committee notes that the UN Committee on the Rights of Persons with Disabilities, in its General Comment No. 4, (2016), on the Right to inclusive education has stated that “inclusion

involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences. Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion. Furthermore, integration does not automatically guarantee the transition from segregation to inclusion".

The Committee also recalls that inclusive education implies the provision of support and reasonable accommodations which persons with disabilities are entitled to expect in order to access schools effectively. Such reasonable accommodations relate to an individual and help to correct factual inequalities (MDAC v. Belgium, Complaint No.109/2014, Decision on admissibility and merits 16 October 2017 para 72). Appropriate reasonable accommodations may include: adaptations to the class and its location, provision of different forms of communication and educational material, provision of human or assistive technology in learning or assessment situations as well as non-material accommodations, such as allowing a student more time, reducing levels of background noise, sensitivity to sensory overload, alternative evaluation methods or replacing an element of the curriculum by an alternative element.

The Committee asks the States parties to provide information on how reasonable accommodation is implemented in mainstream education, whether and to what degree there is an individualized assessment of 'reasonable accommodation' to ensure it is adequately tailored to an individual's circumstances and learning needs, and to indicate what financial support is available, if any, to the schools or to the children concerned to cover additional costs that arise in relation to ensuring reasonable accommodations and access to inclusive education.

It asks in particular what measures are taken to ensure that teachers and assistants dealing with pupils and students with disabilities are adequately qualified.

It furthermore asks whether the qualifications that learners with disabilities can achieve are equivalent to those of other learners (regardless of whether learners with disabilities are in mainstream or special education or of whether special arrangements were made for them during the school-leaving examination). The Committee also asks whether such qualifications allow persons with disabilities to go on to higher education (including vocational training) or to enter the open labour market. The Committee also asks the state to provide information on the percentage of disabled learners who go on to higher education or training. The Committee also asks what percentage of learners with disabilities enter the open labour market.

Remedies

According to the report in the event that the parent or student does not agree with the recommendation/proposal of the expert committee as regards the type of school a child with SEN is to attend or the support to be offered, the expert committee informs the district office deemed competent based on the child's permanent residence. Further the parent may directly institute proceedings with the district office seeking a review of the expert opinion. In this case, the competent district office shall adopt a decision within the framework of an administrative procedure.

Further the report states that the Equal Treatment Authority may investigate cases involving discrimination in education. The Committee notes from the website of the Equal Treatment Authority (Booklet no. 4, The experience of the Equal Treatment Authority with discrimination in the area of education) that the Authority has received many complaints of discrimination in education and takes note of some of the cases investigated by it.

The Committee asks the next report to provide updated information on the remedies available in the case of discrimination on the ground of disability with respect to education (including

access to education, including the provision of adequate assistance or reasonable accommodation) and the relevant case-law.

Conclusion

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

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

Paragraph 2 - Employment of persons with disabilities

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

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

It previously found (Conclusions 2016) that the situation was not in conformity with Article 15§2 of the Charter on the grounds that it had not been established that effective protection against discrimination in employment was guaranteed for persons with disabilities.

Legal framework

The Committee recalls from previous conclusions that the Labour law and Act XXVI of 1998 on the Rights and Equal Opportunities of Persons with Disabilities contains, provide protection against discrimination inter alia on grounds of disability and include an obligation on employers to make reasonable accommodations (Conclusions 2012, 2016).

Section 4 of Act XXVI of 1998 on the Rights and Equal Opportunities of Persons with Disabilities provides that a disabled person is a person who, durably or permanently, suffers from sensory, communication, physical, mental, psycho-social impairment, or any combination thereof which, in interaction with environmental, social and other significant barriers, restricts or prevents their effective and equal participation in society.

Section 22 of Act CXCI of 2011 on Benefits for Persons with Reduced Ability to Work and Amendments to Certain Laws defines in detail (in the context of the payment of the rehabilitation contribution- the tax due by companies that do not employ enough persons with disabilities) who qualifies as a person with reduced ability to work. Accordingly, a person with reduced ability to work is a person whose health status is 60% or less according to the complex classification of the rehabilitation authority.

Access of persons with disabilities to employment

According to the report the number of persons with disabilities and with reduced ability to work of working age was 370,098 in 2018 of which 41.6% were in employment. 12, 352 jobseekers were in receipt of a disability or rehabilitation benefit.

365 accredited employers provide sheltered jobs to approximately 30,000 people with reduced ability to work and with disabilities every year (2015-2018). There are 200 employers nationwide, who are involved in the employment development of on average 5,600 people each year.

The Committee notes from the ANED report (Academic Network of European Disability Experts) on the European Semester (published in 2019 but concerning data from 2016-2017 or earlier) that despite a modest continuing, rise in the employment rate of people with disabilities (41,6%) this remains clearly below the EU average (48,1%).

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

As regards reasonable accommodation the Committee previously pointed out that it needed to know whether there is any case law on reasonable accommodations and asks whether they have facilitated an increase in the employment of persons with disabilities in ordinary working

environments. The report refers to Act XXVI of 1998 on the Rights and Equal Opportunities of Persons with Disabilities which provides for reasonable accommodation and states that subsidies are available to employers who employer persons with disabilities. No further information on case law etc is provided.

According to ANED the Labour Code contains an obligation to provide reasonable accommodation however, in practice this obligation has not had any effect. General awareness of the notion and the precise content of the concept of reasonable accommodation are very low, both in the public and in the private employment sector. Consequently, employers can fail to meet this requirement without a considerable risk. Moreover, no funding has been available for the provision of reasonable accommodation at normal workplaces.

The Committee asks for the Governments comments on this. Meanwhile It reserves it conclusion on this issue.

According to the report there are three forms of employment for workers with reduced ability to work (developing employment, employment by an accredited employer and open labour market employment).

Developing employment was introduced in 2017 and replaced social employment. As of 2017, there are 200 developer-employment organizations, 25% of which are funded by the state, 75% are financed by churches, municipals and non-governmental service providers. The latter are eligible for grants based on applications. On average 5,600 persons are employed in developing employment each year.

According to the report people with severe disabilities who suffer from multiple disadvantages are employed based on a development relationship when they are unable to work. These persons receive a development benefit of not less than 30% of the minimum hourly wage. Persons with disabilities suitable for work are employed on an employment contract and are subject to the Labour Code and the general rules on minimum wages. Compliance with these requirements is regularly monitored by the body involved in professional control and by the competent authority.

The report also states that persons with reduced ability to work may also be employed on a permanent or transitional basis by accredited employers. The aim is to provide the individual with occupational rehabilitation and to prepare the person for work in the open labour market. It is the duty of the accredited employer to mentor and assist the person with reduced ability to work to integrate and work. Persons with reduced ability to work, who work for accredited employers on employment contracts under the Labour Code are subject to the rules of general labour law and minimum wage.

Approximately 36.000 person were employed in developing employment or were in employment with an accredited employer. The budget has increased over the reference period 2018 to HUF 40 billion annually to facilitate further growth of the employment opportunities

Entry into open labour market is mainly facilitated by labour market services and wage subsidies to employers, which have been supported by various EU programmes.

Between 2016 and 31 December 2018, more than 13,000 people with reduced ability to work were involved in programmes, where they had access to rehabilitation services, counselling, training and wage support. Approximately 10,000 of them found a job.

The report also refers to other measures in place to support the inclusion of persons with disabilities on the open labour market such as social contribution tax relief, the rehabilitation contribution scheme (a rehabilitation contribution is payable by an employer if the number of employees exceeds 25 and the number of employees with reduced ability to work is less than 5%).

The report states that In December 2018, 8,953 employers claimed 797,584,000 HUF tax relief for 37,164 people with reduced ability to work under the social contribution tax relief scheme, a significant increase during the reference period.

A Personal Income Tax Credit allows some workers with a long-standing health problem to qualify for a tax deduction of 5% of the minimum wage from their personal income tax monthly.

Remedies

The Committee previously asked whether victims of discriminatory practices can be compensated for the pecuniary loss and non-pecuniary harm that they have suffered, whether any legal or non-legal remedies are available to them, and whether there is any case law on this subject (Conclusions 2016). In the light of the available information, the Committee considered that it had not been established that effective protection against discrimination in employment was guaranteed for persons with disabilities. No information is provided in the report on this issue.

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

Meanwhile it reiterates its previous conclusion

Conclusion

The Committee concludes that the situation in Hungary is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that there are adequate remedies in the event of discrimination on grounds of disability in employment.

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

Paragraph 3 - Integration and participation of persons with disabilities in the life of the community

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

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

The Committee previously concluded that the situation in Hungary was not in conformity with Article 15§3 of the Charter on the ground that it had not been established that effective remedies were guaranteed for persons with disabilities who are victims of discrimination and it had not been established that persons with disabilities had effective access to housing. (Conclusions 2016).

Relevant legal Framework and remedies

The Committee considers that Article 15 reflects and advances the change in disability policy that has occurred over the last two decades or more away from welfare and segregation and towards inclusion, participation and agency. In light of this, the Committee emphasises the importance of the non-discrimination norm in the disability context and finds that this forms an integral part of Article 15§3 of the Revised Charter. The Committee in this respect also refers to Article E on non-discrimination.

The Committee previously concluded that the situation was not in conformity with the Charter on the grounds that it had not been established that effective remedies were guaranteed for persons with disabilities who are victims of discrimination.

The report states that Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities prohibits discrimination on grounds of disability. The Committee refers to its previous conclusions for details of the legislation (Conclusions 2001 and 2016).

Victims of discrimination may take their case to the Equal Treatment Authority. If the Equal Treatment Authority (finds a breach of the Equal Treatment legislation it may order the termination of the violation, prohibit future discriminatory conduct, order the publication of its final decision, impose a fine of between HUF 50,000 to HUF six million. The Equal Treatment Authority may also act ex officio against the state, local governments, bodies exercising public authority, the Hungarian Army and law enforcement agencies.

The Committee notes from other sources (European Equality Law Network 'Hungary report, 2020) that victims of discrimination may also take their cases before the civil courts. Victims of discriminatory acts are entitled to have recourse to mediation under the Act LV of 2002 on Mediation procedure.

The Office of the Commissioner for Fundamental Rights' main task is to investigate violations of fundamental rights and to take general or specific action to remedy them. Under Act CXI of 2011 on the Commissioner for Fundamental Rights anyone may apply to the Commissioner if they consider that an act or omission of an authority violates or directly threatens the fundamental right of the petitioner, provided that the available administrative remedies have already been exhausted or no legal remedy is available. The Commissioner can also proceed *ex officio*.

The Committee ask the next report to provide information on relevant case law. The Committee considers if this information is not provided there will be nothing to establish that there are effective remedies in practice.

Consultation

The Committee previously requested information on the consultation and participation of persons with disabilities in the review and design of disability-related legislation and policies (Conclusions 2016).

According to the report, Act CXXXI of 2010 on Social Participation in the Drafting of Legislation provides that civil society and other interested bodies should be consulted when drafting legislation relevant to them. Further the report states that the participation of people with disabilities in the decision-making processes affecting them is ensured through several forums. For example the Human Rights Working Group, which discusses current issues relating to human rights and make recommendations to decision-makers has a thematic working group on the rights of persons with disabilities composed of 22 NGOs and 3 invited experts and the co-chair of the National Disability Council is a permanent member of the Inter-ministerial Committee on Disability.

The Committee notes the information in the report on the action plan for the implementation of the National Disability Programme in 2015-2018 in response to the Committee's previous question on the results of the programme.

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

Financial and personal assistance

According to the report 'support service' is a social service for people with disabilities provided in their home environment. It includes the provision of personal assistance and transport services to facilitate access to public services.

In 2016, the total amount spent on support services and community services increased by 1.2 billion HUF.

In response to the Committee's previous question as to whether social services were free of charge the report states that some social services are provided free of charge, while others are subject to the payment of a fee. Unless otherwise provided by the Act on Social Services, social services and benefits providing personal care are subject to the payment of a fee. The Committee notes that there are limits to the amount that maybe charged to the recipient, for example fees for home assistance may not exceed 25% of the beneficiary's income, 15% for day care.

The Committee asks the next report to provide further details as to which services are free for charge and which are subject to a payment of a fee.

According to a report of the UN Committee on the Rights of Persons with Disabilities concerning Hungary carried out by the Committee under article 6 of the Optional Protocol to the Convention (CRPD/C/HUN/IR/1, September 2019)(outside the reference period), individualized support for persons with disabilities, is limited in range, scope and geographical distribution, narrowly defined, mainly provided in institutions, remains underdeveloped and is largely ineffective. Personal assistance is not available to all persons with disabilities and insufficiently developed under the current social schemes. Further the Committee found that current financial entitlements related to disability are insufficient to cover the extra costs of disability-related expenses, and still attached to medical assessments.

The Committee asks for the Government's comments on this.

The Committee asks the next report to provide information on the personal assistance schemes; their legal framework, the implementation of the schemes, the number of beneficiaries, and the budget allocated. It also asks whether funding for personal assistance is granted based on an individual needs' assessment and whether persons with disabilities have the right to choose services and service providers according to their individual requirements and personal preferences. Further the Committee asks what measures have

been taken to ensure that there are sufficient numbers of qualified staff available to provide personal assistance. Meanwhile the Committee reserves its position on this issue.

The prevalence of poverty amongst people with disabilities in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of state efforts to ensure the right of people with disabilities to enjoy independence, social integration and participation in the life of the community.

The obligation of states to take measures to promote persons with disabilities full social integration and participation in the life of the community is strongly linked to measures directed towards the amelioration and eradication of poverty amongst people with disabilities. Therefore, the Committee will take poverty levels experienced by persons with disabilities into account when considering the state's obligations under Article 15§3 of the Charter. The Committee asks the next report to provide information on the rates of poverty amongst persons with disabilities as well as information on the measures adopted to reduce such poverty, including non-monetary measures.

Information should also be provided on measures focused on combatting discrimination against, and promoting equal opportunities for, people with disabilities from particularly vulnerable groups such as ethnic minorities, Roma, asylum-seekers and migrants.

States should also make clear the extent to which the participation of people with disabilities is ensured in work directed towards combatting poverty amongst persons with disabilities.

Technical aids

The Committee asks for updated information on the provision and cost of technical aids.

Housing

The Committee previously concluded that the situation was not in conformity with the Charter on the grounds it has not been established that persons with disabilities had effective access to housing (Conclusions 2016).

In response to the Committee's previous question on progress made to move persons from high capacity institutions into sheltered housing, the report states that the de-institutionalisation of persons with disabilities continued during the reference period. Currently people with disabilities may only be placed in supported housing. There is a prohibition of new admissions to institutional places. Supported housing may be a house or an apartment for up to 6 persons, a house or an apartment for 7 to 12 persons or a combination of apartments or buildings for up to fifty persons. The basic principle is that housing and social services should be separate. No other social service may be provided on the site of the housing service. This according to the report encourages independent participation in local community life. The type of housing and services provided are tailored to individual needs.

As of 1 January 2017, the services offered to persons in supported housing were developed. The service provider is obliged to provide 9 service elements based on a the needs assessment of the service user; supervision, meals, care, skills development, counselling, pedagogical assistance, special education assistance, transportation, household assistance. According to the report these services must be separated from the operation of housing. The Committee asks the Government to confirm these services will not be provided in former institutions.

In its previous conclusions (Conclusions 2012, 2016), the Committee requested in particular information on the grants that individual persons with disabilities can request for home renovation/adaptation work, the number of beneficiaries of such grants, and the progress made in improving access to housing. The report provides no information on this. Therefore the Committee it reiterates its conclusion that has not been established that there is an effective access to housing for persons with disabilities.

According to a report of the UN Committee on the Rights of Persons with Disabilities concerning Hungary carried out by the Committee under article 6 of the Optional Protocol to the Convention (CRPD\C/HUN/IR/1, September 2019)(outside the reference period) available sources indicated the lack of accessible and affordable housing, including social housing, and the absence of programmes to adapt existing flats, and/or to rent or purchase accessible housing in the community. A large number of persons with disabilities continue to be in large or small-scale institutions, including in so-called “supported housing”, and “group homes”. The strategy of moving persons with disabilities from large- to small-scale institutions perpetuates and expands institutionalisation, and there are no measures in place to prevent their institutionalisation from extending any further. Further public funds, including European Structural and Investment Funds continue to be invested in building, renovating and expanding large and small-scale institutions.

The Committee asks for the Government’s comments on this.

The Committee asks the next report to provide information on the progress made to phase out institutions (including information on measurable targets clear timetables and strategies to monitor progress) It asks what proportion of private and public housing is accessible. It asks for information about the existence accessible sheltered housing and whether financial assistance is provided to adapt existing housing.

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

Mobility and transport

The report provides information on the purchase and replacement of support service vehicles in order to enable persons with disabilities in supported housing access community services.

The Committee asks that next report to provide information on the proportion of buildings that are accessible to persons with disabilities as well as information on sanctions that are imposed in the event of a failure to respect the rules regarding the accessibility of buildings. It also asks for information on monitoring mechanisms to ensure the effective implementation of the rules.

It also asks for updated information on the accessibility of the public transport system.

Communication

The Committee previously asked to be informed of the progress made to ensure the accessibility of communication technologies. According to the report in 2017, a working group was set up with the coordination of the e-Administration Department of the Ministry of Interior to identify the pieces of legislation on accessibility of public sector websites that need to be reviewed for compliance with the EU Directive on the accessibility of the websites and mobile applications, and to include relevant experts and persons with disabilities themselves in the implementation process***.***

In order to improve the access of persons with disabilities to public services and, a call for proposals was launched in April 2017 to support persons with disabilities through the infocommunication services implemented within the framework of the project "Developing an Infocommunication-Based Teleservice assisting the everyday life of people with disabilities" The total budget of the project is 4 billion HUF. Contracts were awarded to various organisations of persons with disabilities to implement the project.

The Committee asks the next report to provide updated information on the measures taken to ensure sufficient accessibility to all public and private information and communication services, including television and the Internet, for all persons with disabilities.

Culture and leisure

The Committee asks the next report to provide updated information on measures taken to ensure access of persons with disabilities to culture and leisure activities including sporting activities, especially for those in rural areas.

Conclusion

The Committee concludes that the situation in Hungary is not in conformity with Article 15§3 of the Charter on the ground that it has not been established that persons with disabilities have effective access to housing.

Article 20 - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

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

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

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

Legal framework

The report states that the Fundamental Law (the Constitution, which was adopted on 25 April 2011 and entered into force on 1 January 2012) provides for a general prohibition of discrimination and the promotion of equal opportunities. Article XV§2 explicitly prohibits gender discrimination. Article XV§3 stipulates that men and women have equal rights.

According to the report, Section 21(f) of the Equal Treatment Act (Act CXXV on Equal Treatment and Promotion of Equal Opportunities of 2003), prohibits direct and indirect pay discrimination and refers to the Labour Code.

The report states that Section 12§1 of the 2012 Labour Code (Act I, which entered into force on 1 July 2012) stipulates that regarding employment relationships, particularly pay, the principle of equal treatment must be strictly observed. The Committee notes that Act CXCIX of 2011 on Public Servants included similar provisions.

The Committee points out that under Articles 4§3 and 20 of the Charter (and Article 1 (c) of the 1988 Additional Protocol), the right of women and men to equal pay for work of equal value must be expressly provided for in legislation. The equal pay principle applies both to equal work and to work of equal or comparable value. The Committee observes that the legislation does not explicitly provide for equal pay for men and women for "equal work" or for "work of equal value".

In this respect, the Committee notes that the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) also found in its comments published in 2018 (107th session of the International Labour Conference) concerning Convention No. 100 on Equal Remuneration (1951) that the Labour Code (Section 12§3) did not seem to explicitly provide for the obligation to ensure equal pay to men and women for work of equal value, but referred to the principle of equal treatment in terms of pay in general.

In the light of the above, the Committee considers that the obligation to recognise the right to equal pay has not been complied with and accordingly notes that the situation is not in conformity with the Charter on the ground that there is no explicit statutory guarantee of equal pay for women and men for equal work or work of equal value.

Regarding the *concept of remuneration*, the Committee points out that it must cover all elements of pay, i.e. basic pay and all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter's employment (University Women of Europe (UWE) v. France, Complaint No. 130/2016, decision on the merits adopted on 5 December 2019, §163). On this point, the report states that the legislation defines the concept of pay as any remuneration provided directly or indirectly in cash or in kind, based on the employment relationship.

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 notes from the report that a victim of gender discrimination may choose to seek redress before either the civil courts, the labour courts or the Equal Treatment Authority. The Committee asks for the next report to provide detailed and up-to-date information on the remedies available to victims of pay discrimination.

As regards the *burden of proof* in discrimination cases, the report states that Section 19 of the Equal Treatment Act requires a litigant to demonstrate that he/she may have suffered a disadvantage. Once this has been demonstrated then it falls to the defendant to prove that there was no disadvantage, or that the disadvantage was a legitimate exception to the principle of equal treatment. The Committee asks how the principle of shifting the burden of proof is applied in practice, for example, whether it is systematically applied in the event of pay discrimination.

The report contains no information regarding *compensation*. The Committee noted previously that only the courts had the power to award compensation and that they were not bound to accept the conclusions of the Equal Treatment Authority in deciding whether a compensation claim was well-founded. The Committee asks for the next report to confirm that there is no upper limit on the compensation that can be awarded in cases of gender-based pay discrimination. It asks whether the obligation to compensate the difference of pay is limited in time or is awarded for entire period of unequal pay, and if there is the right to compensation for pecuniary and non-pecuniary damages. In addition, it asks for examples of compensation awarded by the courts in cases of gender pay discrimination.

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

Lastly, it asks whether sanctions are imposed on employers in the event of gender pay discrimination.

Pay transparency and job comparisons

The Committee recalls that pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value. Transparency contributes to identifying gender

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

The Committee takes note of the information published in the European Commission staff working document entitled "Evaluation of the relevant provisions in the Directive 2006/54/EC implementing the Treaty principle on 'equal pay for equal work or work of equal value'" (SWD(2020) 51 final, 5 March 2020), according to which pay transparency measures are entirely absent in Hungary.

The Committee notes that national legislation sets the *criteria for identifying work of equal value*: the nature of the work, its quality and quantity, working conditions, vocational training, physical and intellectual efforts expended, experience, responsibilities and labour market conditions (Article 12 of the Labour Code and Section 13 of the Act on Public Employment).

The Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter, and does so therefore every two years (under thematic group 1 "Employment, training and equal opportunities", and thematic group 3 "Labour rights"). Articles 20 and 4§3 of the Charter require the possibility to make job comparisons across companies (see in this respect Complaints Nos. 124 to 138, UWE, *op. cit*.). In this respect, the Committee notes from the national report on gender equality in Hungary drawn up by the European Network of Legal Experts in Gender Equality and Non-Discrimination (2019) that neither legislation nor case-law requires the claimant to refer to a particular employee by way of comparison. The Committee asks whether it is possible to make pay comparisons across companies in equal pay litigation cases. In order to clarify this issue, the Committee considers that provision should be made for the right to challenge unequal remuneration resulting from legal regulation and collective agreements. In addition, there also should be the possibility to challenge unequal remuneration resulting from internal pay system within a company or a holding company, if remuneration is set centrally for several companies belonging to such holding company.

The Committee takes note of the rules regarding job classification and pay systems that apply to law-enforcement staff and public sector employees.

The Committee reiterates its request that the next report provide information on the measures taken to ensure pay transparency in the labour market (notably the possibility for workers to receive information on pay levels of other workers), including the setting of particular timelines and measurable criteria for progress. In the meantime, it reserves its position on this point.

Enforcement

The report reiterates that the Equal Treatment Authority is responsible for investigating complaints concerning violations of the principle of equal treatment. The Committee takes note of the examples of cases of alleged gender-based pay discrimination that the Authority had examined during the reference period.

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

Obligations to promote the right to equal pay

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

The report states that the employment rate of women aged 15 to 64 in Hungary was 62.5% in 2018 (compared with 55.9% in 2014).The employment rate of women aged 25 to 49 with children under 3 years of age increased (from 11.9% in 2013 to 15.3% in 2018).

The Committee notes from Eurostat data that the gender pay gap was 14% in 2015, 2016 and 2017, and 12.2% in 2018 (compared with 17.5% in 2008). It notes that this gap was well below the average for the 28 European Union countries, i.e. 15% in 2018 (data as of 29 October 2020).

The report states that the pay gap stood at 14% in business, 22% in manufacturing, 15.8% in the electricity, gas, and air conditioning sectors, 34.2% in finance and insurance, and 20.6% in the information and communication sectors.

The Committee notes from the report that women's earnings are heavily influenced by the high percentage of women working in sectors with a weaker market position, the early retirement scheme available for women after 40 years of employment and their temporary absence from the world of work during pregnancy and child-rearing. It also takes note of the range of measures implemented during the reference period (provision of childcare services, introduction of early retirement scheme for women, different measures aiming to increase women's participation in a wider variety of jobs and occupations, particularly managerial positions, various family benefits, etc.)

Conclusion

The Committee concludes that the situation in Hungary is not in conformity with Article 20 of the Charter on the ground that there is no explicit statutory guarantee of equal pay for women and men for equal work or work of equal value.

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

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

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

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

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

An important emphasis of the Committee is that "in order to ensure and promote equal pay, the collection of high-quality pay statistics broken down by gender as well as statistics on the number and type of pay discrimination cases are crucial" and that "it is necessary to analyse the causes of the gender pay gap with a view to designing effective policies aimed at reducing it" (see Complaints Nos. 124 to 138, UWE, *op. cit.*). Without identifying and understanding the causes of gender pay differences it is impossible to design adequate measures that could effectively address this problem.

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

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