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## **EUROPEAN SOCIAL CHARTER**

European Committee of Social Rights

Conclusions XXII-1 (2020)

**ICELAND**

*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 Iceland, which ratified the 1961 European Social Charter on 15 January 1976. The deadline for submitting the 33<sup>rd</sup> report was 31 December 2019 and Iceland submitted it on 11 August 2020.

The Committee recalls that Iceland was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to all findings of non-conformity or deferral in its previous conclusions (Conclusions XXI-1 (2016)).

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

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

- the right to work (Article 1);
- the right to vocational guidance (Article 9);
- the right to vocational training (Article 10);
- the right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement (Article 15);
- the right to engage in a gainful occupation in the territory of other Contracting Parties (Article 18);
- the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 1 of the Additional Protocol).

Iceland has accepted all provisions from the above-mentioned group except Articles 9, 10 and Article 1 of the Additional Protocol.

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

The conclusions relating to Iceland concern 7 situations and are as follows:

- 2 conclusions of conformity: Articles 1§1 and 15§2.
- 2 conclusions of non-conformity: Articles 18§2 and 18§3.

In respect of the other 3 situations related to Articles 1§2, 1§4 and 15§1, the Committee needs further information in order to examine the situation.

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

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

- the right to safe and healthy working conditions (Article 3);
- the right to protection of health (Article 11);
- the right to social security (Article 12);
- the right to social and medical assistance (Article 13);
- the right to benefit from social welfare services (Article 14);
- the right of elderly persons to social protection (Article 4 of the Additional Protocol).

The deadline for submitting that report was 31 December 2020.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

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

### *Paragraph 1 - Policy of full employment*

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

#### ***Employment situation***

According to Eurostat, the GDP growth rate fluctuated but remained high during the reference period: 4.7% in 2015, 6.6% in 2016, 4.5% in 2017 and 3.9% in 2018.

The overall employment rate (persons aged 15 to 64 years) rose very slightly, from 84.7% in 2015 to 85.1% in 2018.

The employment rate for men rose very slightly, from 87.1% in 2015 to 87.5% in 2018. The same was true of the employment rate for women: 82.3% in 2015 and 82.5% in 2018. The employment rate of older workers (55 to 64-year-olds) fell from 84.8% in 2015 to 80.7% in 2018. The youth employment rate (15 to 24-year-olds) increased from 73.1% in 2015 to 75.4% in 2018.

The overall unemployment rate (persons aged 15 to 64 years) fell from 4.2% in 2015 to 2.8% in 2018.

The unemployment rate for men declined from 4.1% in 2015 to 3% in 2018, and the rate for women from 4.2% in 2015 to 2.5% in 2018. Youth unemployment (15 to 24-year-olds) decreased from 8.8% in 2015 to 6.1% in 2018. According to the Government report, long-term unemployment (12 months or more, as a percentage of total unemployment) fell from 22% in 2015 to 20% in 2018.

According to Eurostat, the proportion of 15 to 24-year-olds “outside the system” (not in employment, education or training, i.e. NEET) rose slightly, from 4.6% in 2015 to 4.9% in 2018 (as a percentage of the 15 to 24-year-old age group).

The Committee notes the labour market performance in Iceland in comparison with the other States Parties. It notes in particular that in 2018, the overall employment rate was very high, and rising; the overall unemployment rate, moreover, was remarkably low, and falling.

#### ***Employment policy***

In its report, the Government begins by mentioning a number of laws and regulations relating to the labour market which were adopted or amended during the reference period. For example, Act No. 88/2015 (amending the Social Security Act No. 100/2007) and Act No. 38/2018 (amending the Labour Market Measures Act No. 55/2006) aim to make it easier for people with disabilities to enter the labour market, Regulation No. 1223/2015 extended the list of courses recognised as labour-market measures, while Regulation No. 1224/2015 made it possible for job-seekers to undergo training in the workplace without losing their unemployment benefits.

The Government goes on to point out that ensuring that job-seekers receive individual counselling and assistance is regarded as a priority. The Directorate of Labour, moreover, assesses the situation of particular groups when drawing up its employment survey every year, and then sets its priorities based on that assessment. During the reference period, for example, measures were deployed to support women (vocational training in the workplace; fostering entrepreneurship, including in rural areas), job-seekers of foreign origin (language courses; training), refugees (job provision), long-term unemployed and unskilled unemployed (more personalised support; capacity building) and also young people. In this connection, the Committee takes note of the three schemes launched in 2017 in three regions (the capital; the north, i.e. Akureyri and the Eyjafjörður district; and the south-west, i.e. the Suðurnes region) with a view to helping young people into, and strengthening their position on, the labour market (especially young people who have not progressed beyond compulsory schooling and are regarded as being at risk of becoming chronically inactive; young NEETs; young unemployed

people who suffer from mental or physical illness; etc.). The Committee wishes to know whether specific measures are taken to support older workers.

Lastly, the Committee notes that, according to the statistical data provided by the Government, nearly 17,800 registered job-seekers participated in active labour market measures during the reference period, and that the percentage of registered job-seekers who participated in these measures increased from 22.6% in 2016 to 23.5% in 2018.

#### *Conclusion*

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

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

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

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

### **1. Prohibition of discrimination in employment**

Article 1§2 of the Charter prohibits all forms of discrimination in employment. The Committee asked States Parties to submit up-to-date information for this reporting cycle on the legislation prohibiting such discrimination, particularly on grounds of gender (had Article 1 of the Additional Protocol not been accepted) and race, ethnic background, sexual orientation, religion, age, political opinions or disability (had Article 15 of the 1961 Charter not been accepted), together with information on the available remedies. It also asked for information on any specific measures taken to combat discrimination in employment against migrants and refugees.

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

Iceland has accepted Article 15 of the 1961 Charter. Therefore, it was under no obligation to report on prohibition of discrimination on grounds of disability, which will be examined under the said provision.

As regards the legislation prohibiting discrimination in general terms, the Committee previously found that the situation was not in conformity with the 1961 Charter in this respect, on the ground that the legislation prohibiting discrimination in employment on grounds other than sex was inadequate. It noted ongoing legislative work on two bills implementing the principle of equal treatment between persons, irrespective of their racial or ethnic origin, and establishing a general framework for equal treatment in employment and occupation. It asked to be informed about any development on this issue. In reply, the report provides that in 2018, the first anti-discrimination legislation for grounds other than gender was adopted. The Act on equal treatment in the labour market No. 86/2018 covers, on the one hand, the establishment and maintenance of equal treatment of individuals on the labour market irrespective of their race, ethnic origin, religion, life stance, disability, reduced working capacity, age, sexual orientation, gender identity, sexual characteristics or gender expression and, on the other hand, it defines measures to combat discrimination and to establish and maintain equal treatment of individuals, irrespective of their race or ethnic origin in all aspects of society outside the labour market. Thus, these factors are not to influence access to employment, independent business operations or professional occupations, access to educational and vocational counselling, decisions regarding wages, other terms of service and the termination of employment or participation in workers' or employers' organisations. The Committee notes a positive assessment of this Act by the European network of legal experts in gender equality and non-discrimination (European Equality Law Network) in its 2020 country report on Iceland, which pointed also to the fact that, as the legislation has only entered into force recently, there is no case law, and it remains to be seen how the courts will interpret it. The Committee asks that the next report provide information on the case law developments in this respect, as well as on the implementation of the legal framework in practice.

With regard to prohibition of discrimination on grounds of gender, the report states that the 2017 report of the World Economic Forum published concluded that Iceland ranked first among the 140 countries surveyed as regards gender equality, according to the WEF's assessment criteria based on four key elements: access to health services, educational standard, participation in politics and economic position. Each of these is analysed, e.g., on the basis of data on activity rate, wage equality, employment earnings and the gender ratio among managers and specialists. The report recalls that the 2008 Gender Equality Act is the backbone of the legislative framework prohibiting discrimination in employment on grounds of gender. The Centre for Gender Equality monitors the application of the Gender Equality Act

and the 2018 Act on Equal Treatment in the Workplace. The report provides statistical data on the ratio of women and men in employment by occupation, including in various positions of influence, the proportion of men and women on ministerial committees, as well as on average working hours and the pay gap. It states that the labour market may be described as fairly distinctly divided along gender lines. It further provides that under Article 15 of the Gender Equality Act, councils and governing boards of central and local government bodies shall ensure that the gender balance is as close as possible to equal – either gender should form not less than 40% when there are more than three representatives. In the reference period all government ministries in Iceland fulfilled the 40% minimum requirement. The Committee notes that, according to the data, the proportion of women to men on managerial positions is 22% to 78%. It also notes from the European network of legal experts in gender equality and non-discrimination (European Equality Law Network) and its Gender Equality Report on Iceland of 2020, that the number of women on the boards of public companies has not increased despite the quota laws adopted in 2010, and stood at 26.5%, the same proportion as in recent years. It asks that the next report comment on this observation and explain what measures have been taken or envisaged to possibly address the still unequal gender ratio in this respect.

The report further provides that the gender pay gap was 17% in 2015; in 2016 it was 15.6%, falling to 15.3% in 2017, while the unexplained gender wage gap was 4.4% in 2015 and 4.5% in 2016. Furthermore, the Gender Equality Act was amended in 2017, specifying that any company or institution with 25 or more employees is to acquire certification of its equal pay arrangements by a certification body. The main aim of equal pay certification is to militate against gender-based pay differentials and to promote greater gender equality on the labour market by ensuring that men and women will not receive different wages for the same work, or for work of equal value. The Committee asks that the next report provide information on the impact of the equal pay certification system in practice and whether it has noticeably prevented discriminatory practices based on gender. It also asks for clarifications, when a company is considered to be passing the certification requirement.

The report also mentions that in 2018 the Act on Maternity and Paternity Leave was amended, in particular as regards payments to parents during parental leave, the increased length of the leave period, the division of parental leave between the parents and the day-care facilities available when parental leave comes to an end. The report specifies further practical and legislative measures aimed at the prevention of discrimination based on sex, such as Regulation No. 1009/2015, on the measures against ostracism and exclusion (bullying), sexual harassment, gender-based harassment and violence in the workplace, the governmental plan of action on gender equality 2016-2019 with 21 projects to be put into practice during the period, the appointment of a ministerial committee on gender equality and the establishment of the Icelandic Gender Equality Fund. It also provides comprehensive information on the recent case law of the Gender Equality Complaints Committee and of the Supreme Court in equality cases.

Apart from questions on the legal framework, during this examination cycle, the Committee assesses specific, targeted legislation and practical measures focused specifically on discrimination on grounds of ethnic origin, race, age, sexual orientation, political opinion or religion.

As regards the discrimination on grounds of ethnic origin and race, the report provides that in 2018 the Act on Equal Treatment Independent of Race and Ethnic Origin was adopted, with the aim of combating discrimination and establishing, and maintaining, equality of treatment of individuals irrespective of their race and ethnic origin in all areas of society outside the labour market. Section III of the Act prohibits discrimination on grounds of race or ethnic origin, both in general and in certain specified areas of society in particular, for example in social protection and the purchase of goods and services; discrimination is prohibited in educational institutions and child-care organisations. The commentary on the bill which resulted in the act stated that it had been drawn up, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, most particularly in the labour market.

The report does not address specific measures or legislation targeting other grounds of discrimination and the Committee renews its request for comprehensive descriptions of how discrimination on the grounds listed above is prevented and combated.

Apart from questions on the legal framework, during this examination cycle, the Committee assesses specific measures taken to counteract discrimination in the employment of migrants and refugees. The report provides that, pursuant to the 2005 Foreign Nationals' Right to Work Act, a foreigner may work in Iceland based on a work permit. The Directorate of Labour provides assistance of a general nature to foreign nationals seeking employment in Iceland, by running educational activities, by providing material on Icelandic society in collaboration with workers' organisations, and Icelandic language courses which include information on workers' rights. Similarly, it offers specific assistance to refugees and asylum seekers. The Committee asks that the next report confirm that migrant workers, as well as asylum seekers and seekers of subsidiary protection, may exercise equal right to work, when obtaining a permit, including the right to training related to employment, vocational training and acquiring practical work experience, under the same conditions as Icelandic citizens. It further asks what targeted labour market policy measures, such as the on-the-job training, are provided for recognised asylum seekers, aliens under the subsidiary or temporary protection and members of their families.

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 and able to provide reinstatement and compensation, as well as adequate penalties effectively enforced by labour inspection; 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 has assessed many of these aspects in its previous conclusion (see in particular Conclusions XX-1). The report does not provide any new information in this respect and the Committee asks for a comprehensive description of the available remedies and all the relevant data to be included in the next report, in particular on cases of discrimination in employment dealt with by courts and by the equality bodies, with specific indications regarding their nature and outcome, the sanctions imposed on the employers and the level of compensation granted to the employees.

Pending receipt of the information request, the Committee considers that the situation as regards the prohibition of discrimination in employment is in conformity with the Article 1§2 of the 1961 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 Musselle v. Belgium*, 23 November 1983, § 32, Series A no. 70; *Siliadin v. France*, no. 73316/01, §§ 115-116, ECHR 2005-VII; *S.M. v. Croatia* [GC], no. 60561/14, §§ 281-285, 25 June 2020). The Committee also refers to the interpretation by the Court of the concept of « servitude », also prohibited under Article 4§2 of the Convention (*Siliadin*, 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 the domestic environment and protect domestic workers, as well as take measures to implement them.

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

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

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

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

The Committee notes that the national authorities have 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 human trafficking (including for the purpose of forced labour) is criminalised under Article 227a of the General Penal Code, No. 19/1940, and the law provides for a maximum sentence of 12 years' imprisonment. Under the Code of Criminal Procedure, No. 88/2008, the police handle the investigation of cases of this type.

The Committee notes from the 2019 GRETA Report on Iceland that the Ministry of Justice was looking into possible changes in the General Penal Code, such as introducing a separate offence of “forced labour”, and that the authorities had stressed that investigating all the elements required by the offence of trafficking in human beings was challenging (Report

concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Iceland, second evaluation round, GRETA (2019)02, 15 March 2019, para. 147). It also notes that despite GRETA's repeated recommendations, slavery and practices similar to slavery and servitude are not explicitly included as types of exploitation in the legal definition of trafficking in human beings (pars. 144 and 150). The Committee asks to be informed about any legislative developments in this regard.

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 according to the abovementioned GRETA Report there had been only one alleged case of trafficking submitted by the police for prosecution, in 2016, and no conviction since 2009. GRETA urged the Icelandic authorities to take measures to ensure that trafficking in human beings is investigated proactively, prosecuted successfully, and lead to effective, proportionate and dissuasive sanctions, including by reviewing the investigation/prosecution procedure with a view to identifying and addressing gaps (e.g., in relation to trafficking for the purpose of labour exploitation/forced labour) (para. 171). In the same vein, the United Nations Committee on the Elimination of Racial Discrimination, in its Concluding observations of 18 September 2019, expressed concerns about the lack of convictions for trafficking in human beings for the period between 2015 and 2019, despite 74 potential cases being reported, 27 formal investigations being conducted and 88 victims being identified (para. 17).

The Committee therefore asks that the next report provide information on the application in practice of Article 227a of the General Penal Code in relation to forced labour and labour exploitation. The report should provide information (including figures, examples of case law and specific penalties applied) on the prosecution and conviction of exploiters during the next reference period, in order to assess in particular how the national legislation is interpreted and applied.

## **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 report states that the Ministry of Justice published the Government's priorities for measures against human trafficking in March 2019 (outside the reference period). The Government's priorities are presented under four main lines: preventive measures, measures involving support and protection, criminal investigation and prosecution, collaboration and consultation. The measures are not tied to any time frame; they are subject to regular review. The Directorate of Labour runs educational activities in collaboration with workers' organisations, providing courses attended by foreign nationals which include information on workers' rights. The Directorate has a specific human trafficking team, whose members have received special training in interview techniques. The Directorate carries out both on-site examinations and administrative monitoring of employers and workers covered by the relevant legislation (the Foreign Nationals Right to Work Act, the Act on Posted Workers and the Obligations of Foreign Service Providers, and the Act on Temporary-Work Agencies). Inspections are made in collaboration with other bodies having supervisory functions on the

labour market, including tax authorities, the Directorate of Immigration, the police and the Administration of Occupational Health and Safety.

The Committee asks for more detailed information in the next report on the implementation of the Government's priorities and the results achieved, in particular with regard to the prevention of labour exploitation of migrants. It notes in this regard from the abovementioned GRETA Report that there have been allegations of labour exploitation of migrant workers in the construction, tourism and catering sectors (pars. 13 and 56). In relation to labour inspection, the Committee requests that the next report provide detailed information on specific actions carried out by the Directorate of Labour or other supervisory bodies with a view to detecting cases of labour exploitation, particularly in the abovementioned sectors. The report should indicate the number, if any, of presumed victims of forced labour and labour exploitation detected as a result of inspections.

No information has been provided in the report on whether Icelandic 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 notes however from the abovementioned GRETA Report that supply chain liability has been introduced in the construction sector (para. 60). The Committee asks to be informed about this type of liability and on whether it is envisaged to apply it to other sectors and public procurement processes.

#### **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 report provides information on the provision of temporary residence permits in cases involving victims of human trafficking or suspected cases of human trafficking, following the entry into force on 1 January 2017 of the new Foreign Nationals Act, No. 80/2016. These permits are granted for up to nine months. Holders of such permits may not be deported. Under special circumstances (in view of the individual's personal circumstances or if the police consider it necessary for the purpose of cooperation with the authorities in order to investigate a criminal case) renewable one-year residence permits may be granted. Only one residence permit was granted on grounds of human trafficking during the reference period (in 2016). Furthermore, the report states that a special team has been established at the Directorate of Immigration to deal with cases of human trafficking. A new procedure has been adopted, with the aim of identifying human trafficking when processing residence permit applications made on the basis of employment and vocational training.

The Committee asks for information in the next report on the number of presumed victims of forced labour and labour exploitation and the number of such victims benefiting from protection and assistance measures. It also asks for general information on the type of assistance provided by the authorities (protection against retaliation, safe housing, healthcare, material support, social and economic assistance, legal aid, translation and interpretation, voluntary return), 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. In this context, the Committee refers to the 2014 Protocol to the 1930 ILO Forced Labour Convention (ratified by Iceland on 14 June 2017), which requires Parties to provide access to appropriate and effective remedies

to victims, such as compensation, irrespective of their presence or legal status on the national territory.

### **Domestic work**

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

In its previous conclusion (Conclusions XXI-1 (2016)), the Committee noted that the Administration is empowered to make inspection visits to individuals' homes in respect of domestic workers to monitor compliance with the relevant legislation (see also Conclusions XXI-2 (2017), in relation to Article 3§1). The Committee takes note of the information provided in the current report in reply to its previous request concerning the rules and procedures for granting residence permits to migrant domestic workers who are victims of abuse and who are not EEA nationals (see above the general information under "protection of victims and access to remedies, including compensation"). The Committee notes however that GRETA urged the Icelandic authorities to take further steps in the area of preventing trafficking for the purpose of labour exploitation, in particular by reviewing the regulations concerning au pairs to ensure that they are not subject to abuse (GRETA Report, para. 63). GRETA noted in this respect that there was a "grey line" between au pairs, farm workers and domestic workers, many of whom came from Poland. The Committee asks that the next report comment on this issue and provide information on the legislation and practice in this regard.

### **Gig economy" or "platform economy" workers**

The current report states that the "platform economy" remains marginal in Iceland. According to the Icelandic Confederation of Labour, the development and discussion on "platform work" is not under way in Iceland.

The Committee requests that the next report contain information on the status and rights of these workers (employees or self-employed, or an intermediary category), on whether labour inspection services have any mandate to prevent exploitative conditions and abuse in this particular sector and on any existing remedies these workers have access to, in particular to challenge their employment status and/or unfair practices.

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

### *Conclusion*

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

**Article 1 - Right to work**

*Paragraph 3 - Free placement services*

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

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

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

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

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.

Article 1§4 guarantees the right to vocational guidance, continuing vocational training for employed and unemployed persons and specialised guidance and training for persons with disabilities. It is complemented by Articles 9 (right to vocational guidance), 10§3 (right of adult workers to vocational training) and 15§1 (right of persons with disabilities to vocational guidance and training), which contain more specific rights to vocational guidance and training.

As Iceland has not accepted Articles 9 and 10§3, the Committee assesses under Article 1§4 the conformity of the situation relating to the right of adult workers to vocational guidance and training in case the previous conclusion was one of non-conformity or a deferral.

The Committee considered the situation to be in conformity with the Charter as regards measures relating to vocational guidance (Conclusions XXI-1 (2016)) and vocational training and retraining of workers (Conclusions XXI-1 (2016)).

The Committee however deferred its conclusion as regards measures relating to training for persons with disabilities (Article 15§1) pending receipt of information on legislation prohibiting discrimination on the ground of disability in training (Conclusions XXII-1 (2020)). Accordingly, the Committee defers its conclusion on Article 1§4.

### *Conclusion*

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

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

### *Paragraph 1 - Education and training for persons with disabilities*

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

The Committee previously concluded that the situation in Iceland was not in conformity with Article 15§1 of the 1961 Charter on the ground that there was no legislation explicitly prohibiting discrimination in education and training on the ground of disability (Conclusions XXII- 1 2016).

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

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

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

### **Legal Framework**

According to the report considerable amendments were made to Icelandic legislation during the reference period due to the ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD). The main emphasis is on access to inclusive education, though special schools do exist. During the reference period, various legal amendments were made to reinforce this policy.

The Committee previously found the situation not to be in conformity with the Charter on the grounds that no legislation had been adopted which would explicitly protect all people from discrimination on ground of disability in the field of education and training (Conclusions XXI-1, 2016). The report makes reference in this respect to the ratification of the CRPD, and entry into force Act No 38/2018 on Services to Disabled Persons with Long-Term Service Requirements, and Act No. 86/2018 on Equal Treatment on the Labour Market without providing further details. The Committee notes that Article 17 of the Compulsory School Act makes specific reference to non discrimination. The Committee asks the next report to provide further information on the legislation prohibiting discrimination on grounds of disability in education. Meanwhile it reserves its position on this point.

The Act on Services for Persons with Disabilities who have Long-Term Support Needs, No. 38/2018, is based on the CRPD. Its section on “Services to children with disabilities and their families” provides that measures are to be taken to guarantee that children with disabilities receive the services necessary to enable them to enjoy their human rights and dignity on a par with other children, live independent lives and participate in a society without distinctions. In addition, children with disabilities are to have real access to, and benefit from, education, training, preparation for a working career and leisure activities. The parents of children with disabilities are also to receive sufficient services so that their children who have disabilities are able to enjoy their rights and entitlements on a par with others.

Amendments to the Municipalities’ Social Services Act, No. 40/1991, were made by Act No. 37/2018. By virtue of these amendments, municipal authorities are obliged to ensure that children with disabilities have access to special support, including with their schooling.

Under the Compulsory Schools Act, municipalities are responsible for the operation of schools providing compulsory education. The act also covers privately-operated schools and other recognised education providers at the compulsory school level. Under the act, all pupils in compulsory school are entitled to receive teaching suited to their ability which takes account of their needs and general well-being. Article 17 of the Act addresses the position of pupils with special needs. It states that pupils are entitled to have their educational requirements met in mainstream schools, without discrimination, irrespective of their physical or mental abilities. It also states that pupils who have difficulty with studies due to particular learning problems, emotional or social difficulties and/or disabilities, pupils with reading handicaps, chronically ill pupils and other pupils with health-related special needs are entitled to special support in their studies corresponding to their assessed special needs. The general school syllabus for compulsory education states that all pupils in junior school are entitled to pursue studies suited to their ability and that educational opportunities should be independent of the abilities and personal circumstances of each individual, including persons with disabilities.

As regards the definition of disability, the report states that the definition as provided for in law is in conformity with the CRPD. Article 2 of Act No. 38/2018 contains a definition of persons with disabilities; being persons with long-term physical, mental or intellectual impairments or reduced sensation who encounter obstacles of various types which may prevent their full and effective participation in society on an equal basis with others if they do not receive assistance. 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 CRDP 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”.

The Upper Secondary Education Act, No. 92/2008, provides, under Article 38, that pupils with disabilities and pupils with emotional or social difficulties are entitled special support with their studies. Pupils are entitled to special assistance and the appropriate equipment or facilities as needed. It also specifies that pupils with disabilities are to pursue their studies together with other pupils where circumstances permit.

### ***Access to education***

The report states that it is not possible to provide information on the overall number of children with disabilities/SEN. It states that the right to support in connection with learning difficulties applies to a broader group than only those who would be classified as having disabilities. Figures on the numbers of parents who receive caregivers’ allowances in respect of their children with disabilities and/or chronically ill children or children suffering from developmental disturbances are also not reliable indications of the total number of children with disabilities of compulsory school age, since these payments are not restricted to cases where the child is of compulsory school age.



The report provides information on the number of children with disabilities/SEN attending compulsory education in mainstream schools and in special schools. The Committee notes in this respect that the majority of children with disabilities/SEN are educated in mainstream schools. In 2016/2017 2,937 children with disabilities/SEN were in mainstream schools and 164 in special schools, in 2017/2018 the corresponding figures were 1,886 and 163.

According to the report Iceland has two special schools, both are situated in Reykjavík but serving the whole country. One of them, provides education on a temporary basis, for children who suffer from serious mental or social difficulties. Its aim is to enable its pupils to pursue studies in mainstream schools. The other special school, *Klettaskóli*, is school for pupils with intellectual disabilities combined with additional disabilities such as autism, blindness, deafness and serious disorders in motor function. School attendance by pupils domiciled outside Reykjavík is supported financially by their local authorities. *Klettaskóli* provides counselling services and pedagogical support for pupils in other schools (mainstream) who have support needs similar to those of the pupils in *Klettaskóli* itself.

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

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

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

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

The 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***

The Committee asks the next report to provide 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. Meanwhile it reserves its position on this point.

### ***Conclusion***

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

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

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

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

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 conclusions of non-conformity and deferrals.

The Committee previously found that the situation was not in conformity with the 1961 Charter on the ground that there was no legislation explicitly prohibiting discrimination in employment on the ground of disability and that there was no obligation to ensure reasonable accommodation in the workplace during the reference period (Conclusions XXI-1, 2016).

### **Legal framework**

The Committee notes the entry into force of Act 38/2018 on Services to Disabled Persons with Long-Term Service Requirements and in particular Section V of the act regarding employment of persons with disabilities. According to the report this new legislation is intended to align Iceland with the requirements of the UN Convention on the Rights of Person with Disabilities (CRPD). Among the significant new features is that the definition of disability is the same as in the CRPD.

The report under Articles 1.1 and 1.4 states that Iceland has incorporated Council Directive 2000/78/EC into law with the passage of *Lög um jafna meðferð á vinnumarkaði 86/2018* (Law on equal treatment in the labour market). This law prohibits discrimination on the basis of, among other things, disability in the labour market.

Further according to the report under Article 10 of the Equal Treatment on the Labour Market Act, No. 86/2018, employers are to take the appropriate measures, if they are needed in particular cases, to enable persons with disabilities or with reduced working capacity to have access to, and to participate in, and to advance in, employment, or to undergo training, providing that these measures are not excessively burdensome for the employer. This provision is based on Article 5 of Directive 2000/78/EC. Some examples of appropriate measures on the part of the employer were given in the notes to the bill, for example the engagement by the employer of a sign- language interpreter so as to secure vocational training for a hearing-impaired worker on an equal footing with other workers. Another example given was that of an applicant who uses a wheelchair applying for an office job where the workplace is located on the fourth floor of a building with no lift. If the employer has offices on several floors, including the ground floor of the building, then it could be expected that he or she would arrange working facilities on the ground floor for the worker, moving another worker who is capable of climbing the stairs to the fourth floor instead. If, on the other hand, the company in question only has offices on the fourth floor, then it would be natural to conclude that the measures needed in order to engage an applicant who uses a wheelchair would impose too great a burden on the employer, thus absolving him or her from the obligation to undertake them.

The Committee considers that the situation is now in conformity in this respect.

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

According to the report the number of persons between the ages of 18 and 66 with disability status was 18,290 in 2017. Statistics Iceland published data on the position of disability benefit recipients on the labour market for the first time in 2019. In 2015 there were 12,285 persons in receipt of disability benefits not on the labour market, 920 persons unemployed and 5,632 in employment, the corresponding figures for 2016 were 12,415, 629 and 6,488 and in 2017 12,419, 375, 5,105.

The number of persons with disability ratings who were active on the labour market and did not receive disability benefits due to the earnings they have from employment was 931 in 2015, 965 in 2016, 980 in 2017 and 1009 in 2018.

The Committee notes from the ANED report (Academic Network of European Disability Experts) on the European Semester (published in 2019, but concerning data from 2016-2017 or earlier) that ANED estimates, based on Icelandic EU-SILC data, indicated in 2015 a disability employment rate of 50.1%, compared to 81.7% for non disabled people .

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. It emphasizes that it needs this information in order to assess the situation.

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

Section V of the Act on Services for Persons with Disabilities who have Long-Term Support Needs specifies that the Directorate of Labour is in responsible for organising and presenting labour-market measures, including the assessment of suitability for work and the evaluation of the need for labour-market measures under the Labour Market Measures Act. The organisation, implementation and operation of sheltered employment facilities, rehabilitation and training in employment activities, on the other hand, are the responsibility of the local authorities unless other specific provisions are made in agreements between the state and the Directorate of Labour.

Persons with disabilities are to have priority access to jobs with the state and the local authorities if their competence for the work is greater than, or equal to, that of other applicants (see the third paragraph of Article 22 of the act). Under the third paragraph of Article 12 of the Labour Market Measures Act, No. 55/2006, the Directorate of Labour is in charge of labour-market measures for persons with disabilities, including special support for jobseekers and follow-up measures such as employment contracts for persons with disability ratings (reduced working capacity).

The report provides updated information on other measures available to encourage and support the employment of persons with disabilities.

The Minister of Social Security is authorised to commission the Directorate of Labour to enter into contracts with companies or institutions under which they engage persons with reduced working capacity who are in receipt of disability benefits, disability grants, rehabilitation pensions or accident disability benefit at less than 50% of the full rate and have working capacity that has not been harnessed on the labour market and who have no substantial income to live on, other than benefits from the social security system.

The numbers of persons with disabilities employed under this scheme were as follows: 2015: 522; 2016: 592; 2017: 900 and 2018: 1107. They were employed in a wide range of workplaces: kindergartens, libraries, fitness centres, staff canteens, computer firms, sports clubs, offices, production companies and shops.

The report also refers to the Employment with Support programme described in previous reports and conclusions (Conclusions XXI-1, 2016) The programme provides broad support for persons with reduced working capacity due to mental and/or physical disabilities, and includes assistance with finding suitable employment in the private sector, training in the workplace and follow-up monitoring.

The numbers of persons entering vocational rehabilitation with the Vocational Rehabilitation Fund (VIRK) for the first time were in 2015: 1,793; in 2016: 1,710; in 2017: 1,855 and in 2018: 1,965. In 2018, 74% of those who completed rehabilitation with VIRK were either fully or partly active in employment or were seeking employment or were pursuing studies. This applied to

77% of all those who had been discharged from VIRK since it began operations. In 2017 the proportion was 79%; in 2016 it was 82% and in 2015 it was 74%.

A special developmental project was launched in 2015 by VIRK “*Closer connection between vocational rehabilitation and employment*”, the aim of which was to establish definite contact between individuals with reduced working capacity and the labour market before their vocational rehabilitation ended. Currently, about 200 enterprises have signed collaboration agreements with VIRK under the project, and a special campaign is now in progress in which the focus is on reaching out to companies that have not worked with VIRK hitherto.

The Committee previously asked the next report to provide updated information as to whether sheltered employment facilities still operate and how many people with disabilities work there. The report states that Act no. 38/2018, which replaced Act no. 59/1992 provides for sheltered employment. There are 25 sheltered employment facilities in the association *Hlutverk* a nationwide association of sheltered employment facilities; this figure accounts for practically all such facilities in Iceland and a total number of employees is around 800. The sheltered-employment facility Reykjalundur is not a member of the association.

According to report under Article 1.4 the current national strategy in Iceland is the Parliamentary Resolution on a Plan of Action on Disabled Persons’ Affairs 2017 – 2021 16/146. Increasing employment participation of people with disabilities’ is one of the seven key objectives. The Committee asks to be informed about the results of the Plan of Action.

#### *Remedies*

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

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Iceland is in conformity with Article 15§2 of the 1961 Charter.

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

*Paragraph 1 - Applying existing regulations in a spirit of liberality*

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

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

### *Paragraph 2 - Simplifying existing formalities and reducing dues and taxes*

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

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.

### ***Administrative formalities and time frames for obtaining the documents needed for engaging in a professional occupation***

In its previous conclusion (Conclusions XXI-I (2016)), the Committee noted that work permits and residence permits were still issued under two separate procedures and that foreign nationals were not allowed to submit their applications from within Iceland. It therefore concluded that the situation was not in conformity with Article 18§2 of the 1961 Charter on the ground that the formalities for issuing work and residence permits had not been simplified.

The report states that a new Foreign Nationals Act, No. 80/2016, came into force on 1 January 2017, replacing the previous act of the same name, No. 96/2002. Under Article 50, foreign nationals intending to accept work in Iceland must hold residence permits (the Foreign Nationals' Right to Work Act, No. 97/2002, lays down the same requirement). Under the Foreign Nationals Act, No. 80/2016, and the Regulation on Foreign Nationals, No. 540/2017 (as amended), foreign nationals (excluding EEA/EFTA nationals) who intend to live in Iceland for more than three months must be in possession of residence permits.

The report again states that it is not permitted to grant a foreign national living in Iceland a work permit without a residence permit. All first-time applications for residence permits must be approved before the applicants arrive in Iceland. First-time applicants who are already in Iceland at the time of application must leave the country before their applications can be considered. Exemptions to this rule may be granted in special circumstances, for instance such as where families are to be reunited or cogent considerations of fair treatment justify doing so. The report further states that the time taken for granting residence permits may be up to 180 days from the date of submission of all the documents required (as against 90 days, Conclusions XXI-I (2016)).

The Committee understands from the information provided in the report that the situation has not changed during the reference period. In this connection, it reiterates that conformity with Article 18§2 presupposes the possibility of completing the formalities concerning the issuance of work and residence permits in the country of destination as well as in the country of origin and obtaining residence and work permits at the same time and through a single application. It also implies that waiting times for the requisite documents (residence/work permits) must be reasonable. As work permits and residence permits are still issued under two separate procedures, foreign nationals are not allowed to submit their applications from within the country and the time taken to obtain residence permits has doubled, the Committee holds that the formalities have not been simplified and that the situation is therefore still not in conformity with Article 18§2 of the 1961 Charter.

The Committee again requests that the next report indicate whether the same formalities apply in respect of self-employed workers. It also again asks what formalities apply to the renewal of work permits and the timeframe needed for processing renewals. It points out that if the requested information is not provided in the next report, nothing will enable it to establish that the situation in Iceland is in conformity with Article 18§2 of the Charter on this point.

### ***Chancery dues and other charges***

The report states that under the Additional Treasury Income Act, No. 88/1991, the fees charged for processing and issuing residence permits are as follows:

- ISK 15,000 (or €93; as against ISK 12,000 (€77) in 2014) for first-time provisional residence permit applications; and
- ISK 15,000 (or €93; as against ISK 6,000 (€39) in 2014) for the renewal of residence permits and for permanent residence permits.

The Committee underlines that under Article 18§2 of the Charter, the States Parties undertake to reduce or abolish chancery dues and other charges payable by foreign workers or their employers. It notes that in Iceland the fees increased during the reference period, which is not in keeping with the spirit of Article 18§2 of the Charter. It considers, however, that increases in chancery dues or other charges can be considered to be in conformity with Article 18§2 of the Charter as long as they are made for a good reason (for example in order to cover increased processing costs or inflation) and they are not excessive. The Committee requests that the next report provide up-to-date information on the regulatory criteria governing the level of these fees – whether, for instance, it corresponds to the actual cost of processing residence permit applications – and whether there is provision for measures to reduce the costs for workers and employers. In the meantime, the Committee reserves its position on this point.

#### *Conclusion*

The Committee concludes that the situation in Iceland is not in conformity with Article 18§2 of the 1961 Charter on the ground that the formalities for issuing work and residence permits have not been simplified.



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

### *Paragraph 3 - Liberalising regulations*

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

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

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

In its previous conclusion (Conclusions XXI-I (2016)), the Committee concluded that the situation in Iceland was not in conformity with Article 18§3 of the 1961 Charter on the ground that it had not been established that the existing regulations had been liberalised. Therefore, it asked to clarify what were the specific requirements applying to the granting of work permits during the reference period, and in particular whether the access of foreign workers to the national labour market has been extended or restricted during such period. It also asked to provide more detailed information on the condition related to the shortage of qualified workers in the EEA (how such condition is assessed and what is the rate of refusal of applications based on this requirement) in respect of nationals of non-EEA States parties to the Charter.

In reply, the report indicates that in cases where foreign nationals move to Iceland in search of work, the granting of residence permits and work permits are linked. Under Article 50§2 of the Foreign Nationals Act No. 80/2016 (took effect on 1 January 2017, replacing the earlier Act of the same name No. 96/2002), foreign nationals intending to accept work in Iceland must hold residence permits. It is not permitted to grant a foreign national living in Iceland a work permit without a residence permit. The general conditions for the granting of temporary work permits are set out in Article 7§1 of the Foreign Nationals' Right to Work Act No. 97/2002:

1. That employees cannot be found either on the domestic labour market or within the EEA/ EFTA states or the Faroe Islands, or that there are other special reasons for granting the permit. According to the report, work permits issued according to the condition of a shortage of employees (Article 9 of the Foreign Nationals' Right to Work Act) are normally only granted in order to address temporary situations on the Icelandic labour market. When evaluating whether an application for a work permit on the grounds of a shortage of labour should be granted, the Directorate of Labour adopts a position on the job that is at the focus of the application and examines whether it could be expected, in general terms, that the employer could fill the job with a worker who is already exempt from the requirement to hold a work permit in Iceland.
2. That the local trade union in the relevant branch of industry (or the appropriate national federation) has made its comment on the application (this condition may be waived where there is no overall organisation or national federation in the relevant branch of industry).
3. That an employment contract between the employer and the foreign national has been signed, covering a specific period or task and guaranteeing the foreign national wages and other terms equal to those enjoyed by Icelandic nationals.
4. That it is demonstrated that the employer has taken out health insurance for the foreign national.
5. That the employer guarantees to pay the cost of sending the employee back to his home at the end of the employment period in the event of the termination of employment for which the employee is not responsible or if the employee becomes incapable of working for a long period as a result of illness or an accident.

Regarding extension or renewal, the report indicates that once the general conditions are met, specific conditions apply to each type of work permit. The Committee takes note of the specific conditions for the renewal of each type of temporary work permit detailed in the report. It also

notes from the report that no amendments were made during the report period resulting in a restriction or relaxation of the authorisations to grant work permits, apart from the broadening of the authorisation covering work permits in connection with special circumstances. Moreover, according to a new Foreign Nationals Act No. 80/2016, foreign nationals who are permitted to live permanently in Iceland should at the same time gain the right to participate in employment without restrictions. The Committee asks again under what conditions a foreign worker can obtain a permanent work permit.

Regarding the secure income that apply for a temporary residence and work permit, the report indicates that the amounts are now ISK 189,975 for an individual and ISK 284,813 for a married couple (that is respectively €1,422 and €2,132 at the rate of 31/12/2018). Couples that are not married need to each fulfil the minimum income for individuals. The Committee observes that the amounts requested of secure income have increased during the reference period.

As regards access to the Icelandic labour market for self-employed workers, the report indicates that according to the Foreign Nationals Act No. 80/2016, foreign nationals may not work in Iceland as self-employed individuals unless they are exempt from the requirement to hold work permits (foreign spouses or cohabiting partners of Icelandic citizens; those who have been granted residence permits on grounds of international protection; those who have been granted permanent residence permits, etc. ). The report also indicates that the definition of 'employer' in the new Act was changed to include self-employed individuals. Thus, the Committee notes from the report that foreign nationals can still found a company for the purpose of business operations (e.g. a private/ public limited company), providing they meet the legal requirements regarding such companies, and to apply for the appropriate temporary work permits according to the provisions applying thereto so as to cover their work as employees of the company in question.

The Committee notes that, according to the figures presented in the report, the number of applications for work permits (first-time applications and applications for renewal) submitted by foreign nationals (from Europe, non-EEA/EFTA) has increased (from 222 in 2015 to 458 in 2018), and the rate of refusal of permits granted has also increased during the reference period (from 25.8% in 2015 to 39.9% in 2018). The report also presents statistical information on rejections of work-permit applications in cases where the condition of a shortage of labour has not been met. The Committee notes that the proportion of such rejections when first-time applications are made (European citizens non-EEA/EFTA) grew from 28.9% in 2015, 25.9% in 2016, 32% in 2017 to 43.8% in 2018. The proportion of rejections of applications in such cases for new permits and extensions has increased considerably during the reference period (59.1% in 2015, 68.9% in 2016, 71.5% in 2017 and 73.6% in 2018).

In the light of the above, the Committee notes that, despite some legislative changes, refusals of work permit applications for nationals of non-EU/EEA States parties to the Charter are most often the result of the application of so-called "priority worker" rules, which does not show that the regulations have been applied in a liberal spirit. Consequently, the Committee considers that the situation is not in conformity with Article 18§3 of the 1961 Charter on this point.

### ***Consequences of loss of employment***

In its previous conclusion (Conclusions XXI-I (2016)), the Committee noted that the legislation in Iceland allowed for a residence permit to be revoked in certain cases, following the revocation of a work permit, and therefore concluded that the situation was not in conformity with Article 18§3 of the Charter.

In reply, the report explains that the revocation of a work permit and residence permit is an administrative act (Article 1§2 of the Administrative Procedure Act No. 37/1993). Both the Foreign Nationals' Right to Work Act No. 97/2002 and the Foreign Nationals Act No. 80/2016, refer to the Administrative Procedure Act and specify the application of certain procedural principles of Administrative Law. The report states that it follows from the procedural rules that,

under certain circumstances, the Icelandic authorities are obliged to give parties to cases guidance regarding their rights and the procedure in the case, in a language which they may fairly be assumed to be able to understand, and to grant them the right of raise objections before decisions are taken. The same applies to the taking of a decision on the revocation of a residence permit; such a decision cannot be taken until after the final decision on the revocation of the work permit is known.

#### *Conclusion*

The Committee concludes that the situation in Iceland is not in conformity with Article 18§3 of the 1961 Charter on the ground that the regulations governing access to the labour market for foreign workers who are nationals of non-EU/EEA States Parties to the Charter have not been liberalised.

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

*Paragraph 4 - Right of nationals to leave the country*

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

