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European Committee of Social Rights

Conclusions XXII-1 (2020)

LUXEMBOURG

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 Luxembourg, which ratified the 1961 European Social Charter on 10 October 1991. The deadline for submitting the 23rd report was 31 December 2019 and Luxembourg submitted it on 24 June 2020.

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

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

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

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

Luxembourg has accepted all provisions from the above-mentioned group except Article 1 of the Additional Protocol.

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

The conclusions relating to Luxembourg concern 8 situations and are as follows:

- 1 conclusion of conformity: Article 1§1.
- 3 conclusions of non-conformity: Articles 10§4, 15§1 and 15§2.

In respect of the other 4 situations related to Articles 1§2, 1§4, 10§1 and 10§3, the Committee needs further information in order to examine the situation.

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

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

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

The deadline for submitting that report was 31 December 2020.

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

Article 1 - Right to work

Paragraph 1 - Policy of full employment

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

Employment situation

According to Eurostat, the GDP growth rate fluctuated during the reference period, increasing from 4.3% in 2015 to 4.6% in 2016, then falling to 1.8% in 2017 before rising again to 3.1% in 2018, a rate which was higher than the average for the 28 European Union (EU) members States (2% in 2018).

The overall employment rate (persons aged 15 to 64 years) increased from 66.1% in 2015 to 67.1% in 2018, which was below the EU 28 average (68.6% in 2018).

The employment rate for men dropped slightly, from 71.3% in 2015 to 70.6% in 2018, which was below the EU 28 average (73.8% in 2018). The employment rate for women rose from 60.8% in 2015 to 63.4% in 2018, which was practically the same as the EU 28 average (63.3% in 2018). The employment rate for older workers (55 to 64-year-olds) increased from 38.4% in 2015 to 40.5% in 2018, which was well below the EU 28 average (58.7% in 2018). Youth employment (15 to 24-year-olds) dropped slightly, from 29.1% in 2015 to 28.4% in 2018, which was below the EU 28 average (35.3% in 2018).

The overall unemployment rate (persons aged 15 to 64 years) fell from 6.7% in 2015 to 5.6% in 2018, which was below the EU 28 average (7% in 2018).

The unemployment rate for men decreased from 6.2% in 2015 to 5.4% in 2018, which was below the EU 28 average (6.7% in 2018). The unemployment rate for women fell from 7.4% in 2015 to 5.9% in 2018, which was below the EU 28 average (7.2% in 2018). Youth unemployment (15 to 24-year-olds) decreased from 17.3% in 2015 to 14.2% in 2018, which was below the EU 28 average (15.2% in 2018). Long-term unemployment (12 months or more, as a percentage of overall unemployment for persons aged 15 to 64 years) dropped from 28.4% in 2015 to 24.7% in 2018, which was substantially lower than the EU 28 average (43.4% in 2018).

The proportion of 15 and 24-year-olds “outside the system” (not in employment, education or training, i.e. NEET) decreased from 6.2% in 2015 to 5.3% in 2018 (as a percentage of the 15 to 24-year-old age group), which was substantially lower than the EU 28 average (10.5% in 2018).

The Committee notes the favourable developments in the labour market (an increase in the overall employment rate and falling unemployment). However, in general, employment rates are lower than the EU 28 average, especially for young people and older workers.

Employment policy

In its report, the Government outlines the measures taken for youth employment. In particular, the Youth Guarantee scheme, launched in June 2014 in Luxembourg for under 25-year-olds, was extended to young people under 30 in 2018. Since then, all jobseekers under the age of 30 have been registered with one of the three main branches of the Agency for the Development of Employment (ADEM). On joining the programme, they can choose to follow three different paths (return to education, join the voluntary service to discover their skills and interests or start working) and benefit from one-on-one appointments and individual counselling (regular, moderate or intensive, depending on the profile of the job-seeker), which are provided by a multidisciplinary team of specially trained advisers. From July 2014 to September 2018, 14,573 young people were registered with the Youth Guarantee scheme. The percentage of young people who dropped out of the programme in the four months following their enrolment fell from 24.3% in 2015 to 15.2% in 2017. In addition, the percentage

of young people who received a “good quality offer” (mainly a job offer) during those four months increased from 44.9% in 2015 (1,735 young people) to 58.7% in 2017 (1,609 young people).

The Committee takes note of the other labour market measures specifically taken for persons under the age of 30 (subsidised jobs; jobs offered by the state, a municipality, a public body or a not-for-profit organisation; training and professional initiation experience in an enterprise as part of the “Jobelo” programme) as well as other measures implemented by ADEM during the reference period, such as adult learning, setting up or taking over an enterprise, etc. The Committee requests that the next report provide information on the labour market measures specifically designed to support older workers.

The statistics submitted by the Government show that 16,515 jobseekers benefited from a labour market measure during the reference period (4,336 in 2015, 4,042 in 2016, 4,102 in 2017 and 4,035 in 2018). The Committee 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).

Lastly, the Committee notes that according to statistics from the European Commission, public expenditure on labour market policies (as a percentage of GDP) remained relatively stable: 1.27% in 2015 and 1.32% in 2017 (the percentage allocated to active and passive measures being respectively 0.5% and 0.7% in 2015, and 0.7% and 0.6% in 2017).

Conclusion

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

1. Prohibition of discrimination in employment

Article 1§2 of the Charter prohibits all forms of discrimination in employment. The Committee asked the States Parties to submit up-to-date information for this reporting cycle on the legislation prohibiting all forms of discrimination in employment, in particular on grounds of gender (had Article 1 of the Additional Protocol not been accepted) 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.

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

As regards the legislation prohibiting discrimination in general terms, the legal framework previously found to be in conformity with the Charter (see Conclusions XX-1 (2012) and XXI-1 (2016)) has not changed.

No statutory changes have been reported with respect to the legislation targeted at combating discrimination on grounds of race, ethnic background, sexual orientation, age, political opinion or religion. The Committee notes that it addressed the legal framework and the situation in practice relating to these issues and found them to be in conformity with the requirements of the Charter (see in particular, Conclusions XVI-1 and Conclusions XIX-1). Considering the fact that, according to the report, there have been no substantial changes, the Committee renews its positive conclusion on these aspects. However, given that the latest comprehensive assessment of the situation dates back to more than 10 years, it requests that the next report provide a full and up-to-date description of the situation in law and practice. It notes, in particular, that in its 2019 report, the European Commission against Racism and Intolerance (ECRI) welcomed the enactment of new legislation strengthening protection of transgender persons and asks that the next report provide information on the impact the amendments have had on the prevention of discrimination in employment on grounds of sexual orientation.

With regard to access by foreign nationals to employment without discrimination, the Committee noted in its previous conclusion (Conclusions XXI-1) that the 2015 Law on the conditions of service and remuneration of state employees introduced *ad hoc* exceptions to the Luxembourg nationality requirement for the posts set out in the 2010 Grand Ducal regulation on civil service. It requested confirmation that the above-mentioned posts which are no longer reserved for nationals are also open to nationals of other States Parties to the Charter which are not members of the European Union. The report confirms that nationals of a third country can be hired as employees under private law. The Committee asks how these provisions are implemented in practice. The collective agreement for government employees requires that they should be nationals of a member state of the European Union. However, in case of necessity of the service, admission to the service may be granted to employees who are nationals of a country that is not a member of the European Union.

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 does not provide any information on this issue and the Committee recalls its request in this respect.

Neither does the report provide updated information on the prohibition of discrimination on grounds of gender and, while noting that it appears that there have been no changes in the situation concerning the principle of equal treatment of men and women, the Committee asks that the next report provide an up-to-date description of the situation.

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

The Committee has comprehensively addressed various aspects of the remedies available for victims of discrimination in its previous conclusions (see in particular, Conclusions XVI-1 and Conclusions XXI-1). In its 2016 conclusion (Conclusions XXI-1), the Committee asked for information regarding case law on discrimination in employment and in reply, the report provides examples of relevant jurisprudence, showing how the notions of discrimination (*inter alia*, on grounds of race or political opinion, or notion of indirect discrimination) are interpreted by the courts.

The report does not provide any new information on other aspects that would pertinently assess the effectiveness of available remedies. The Committee thus requests a full and up-to-date description of the situation in law and practice in respect of remedies in cases of alleged discrimination, which should include information on procedures available, burden of proof, penalties, level of compensation, as well as statistics on the number of discrimination cases lodged and won before various courts and/or equality bodies.

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

2. Forced labour and labour exploitation

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

Referring to the Court's judgment of *Siliadin v. France*, the Committee has in the past drawn the States' attention to the problem raised by forced labour and exploitation in the domestic environment and the working conditions of the domestic workers (Conclusions 2008, General Introduction, General Questions on Article 1§2; Conclusions 2012, General Introduction, General Questions on Article 1§2). It considers that States Parties should adopt legal provisions to combat forced labour in 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 not replied 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 report states that the Labour Code has no provision defining forced labour. However, pursuant to the Section on human trafficking in Article 382-1 of the Criminal Code, which the Grand Ducal Police is responsible for enforcing, it is an offence to exploit labour by means of forced labour or services. The Committee notes from the 2018 GRETA Report on Luxembourg that the offence of trafficking in human beings includes exploiting the labour or services of a person in the form of forced or compulsory work or services, servitude, slavery or practices similar thereto and in general, in conditions contrary to human dignity among the various purposes of exploitation (Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Luxembourg, second evaluation round, GRETA (2018)18, 6 November 2018, paragraph 143).

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 accordingly asks for information in the next report on the application of Article 382-1 of the Criminal Code in practice, particularly with regard to forced labour and other forms of labour exploitation. The report should provide information (including figures, examples of case law and specific penalties effectively applied) on prosecution and conviction during the next reference period, in order to assess in particular how the national legislation is interpreted and applied. It notes in this respect that GRETA had expressed concern that the sentences handed down were often less severe than those provided for in Articles 382-1 et seq. of the Criminal Code for trafficking offences and that a suspended sentence order could be imposed for the entire sentence (GRETA Report, paragraph 178).

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 provides no information on these matters. The Committee notes from the aforementioned GRETA Report that a National Action Plan Against Trafficking in Human Beings was adopted in 2016 (see also Conclusions XXI-4 (2019) on Article 19§1). It provides for measures including training for the stakeholders concerned and awareness raising for the general public and for those at risk (paragraphs 26 and 27). The Committee asks for information in the next report on the implementation of this plan and the results achieved in the fight against forced labour and labour exploitation, including in respect of migrants.

The Committee also asks for detailed information in the next report on the role of the Mines and Labour Inspectorate (ITM) and the measures it takes to prevent and detect labour exploitation, particularly in sectors such as agriculture, construction and hospitality. The report should indicate the number, if any, of presumed victims of forced labour or labour exploitation detected as a result of inspections conducted. On this point, the Committee notes that ITM officials told GRETA that, because of understaffing, they had been unable to commit more resources to the proactive identification of victims of human trafficking (with one inspector for 18,500 employees at the time of the report).

No information has been provided in the report on whether legislation in Luxembourg 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 therefore reiterates its request for information.

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 does not provide any information on this point. The Committee accordingly asks for information in the next report on the number of presumed and formally identified victims of forced labour and labour exploitation and the number of such victims benefiting from protection and assistance measures. It also asks for general information on the type of assistance provided (protection against retaliation, safe accommodation, health care, material assistance,

social and economic assistance, legal advice, translation and interpretation, voluntary repatriation, 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§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 asked whether the homes of private individuals who employ domestic staff could be inspected, and if foreign domestic workers had the right to change employer in the event of abuse or if they lost their residence rights upon leaving their employer. With regard to the question of the Labour Inspectorate conducting visits to private homes, the current report states that if there are serious indications that the origin of a breach of the laws which the ITM is responsible for (working conditions and health and safety at work) can be found in the homes of individuals who employ domestic staff, the ITM may, with a warrant issued by an investigating judge, perform home visits between 6.30 am and 8 pm. In response to the second question, the report indicates that during the first year of legal employment in Luxembourg, holders of a residence permit for "employed persons" or of a work permit have their labour market access restricted to a single sector and a single occupation but can work for any employer. Therefore, such employees face no restrictions regarding employers.

The Committee takes note of these points and asks for information in the next report on the number of visits conducted in the domestic work sector by the ITM and the number of victims of forced labour or labour exploitation identified as a result, if any.

"Gig economy" or "platform economy" workers

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

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

In the meantime, pending receipt of the information requested in respect of all the points mentioned above (criminalisation, prevention, protection, domestic work and 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 Luxembourg.

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

The Committee considered the situation to be in conformity with the 1961 Charter as regards measures relating to vocational guidance (Article 9) (Conclusions XXI-1 (2016)) as well as to training for persons with disabilities (Article 15§1) (Conclusions XXII-1 (2020)).

The Committee however deferred its conclusion on continuing vocational training (Article 10§3) (Conclusions XXII-1 (2020)). Accordingly, the Committee defers its conclusion on Article 1§4.

Conclusion

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

Article 9 - Right to vocational guidance

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

Article 10 - Right to vocational training

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

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

The Committee refers to its previous conclusions for a description of the situation which it found to be in conformity with the Charter (see Conclusions XXI-1 (2016)).

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

In its previous conclusion (Conclusions XXI-1 (2016)), the Committee noted that vocational training courses were provided from 10th grade, with a competency-based approach involving teaching by modules geared towards practical work situations. To make general secondary education and general higher education qualifications relevant from the perspective of vocational integration in the job market, VET standards are developed in co-operation between the Education Ministry and professional chambers, with programmes based on professional standards devised in line with needs in enterprises.

The Committee further notes that because of certain factors specific to Luxembourg, cross-border apprenticeship contracts are also used (practical work experience in a training institution in Luxembourg and college training in a neighbouring country).

Measures taken to integrate migrants and refugees

The Committee notes that no information has been provided by the Luxembourg authorities on this issue. Consequently, considering that it is not able to assess whether the measures taken to integrate migrants and refugees into vocational education and training are in conformity with Article 10§1, the Committee reserves its position and asks the authorities to submit such information.

Conclusion

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

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 Luxembourg.

The Committee recalls that it previously found the situation to be in conformity with Article 10§3.

The Committee notes that Luxembourg was asked to answer the specific targeted questions about this provision (these questions were included in the appendix to the letter of 27 May 2019 in which the Committee requested a report on the implementation of the Charter in relation to the provisions in the “Employment, training and equal opportunities” thematic group).

The Committee notes that the authorities have not provided any information in response to the targeted question. The Committee therefore reserves its position and reiterates its question and asks the authorities to describe the strategies and measures (legal, regulatory and administrative frameworks, financing and practical measures) put in place for training and retraining across the entire range of skills (especially digital culture, new technologies, human-machine interaction and new working environments, the use and operation of new tools and machines) which workers need in order to be competitive in emerging labour markets.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 4 - Encouragement for the full utilisation of available facilities

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

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

In 2016, the Committee deferred its conclusion (Conclusions XXI-1, 2016).

In its previous conclusion (Conclusions XXI-1, 2016), the Committee asked the next report to indicate whether the legislation complies with the obligations under Article 10§4 of the 1961 Charter. In particular, it recalled that access to financial assistance for studies shall be provided to nationals of other States Parties lawfully resident in any capacity, or having authority to reside by reason of their ties with persons lawfully residing in the territory of the Party concerned. Students and trainees, who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training are not concerned by this provision of the Charter. Article 10§4 does not require the States Parties to grant financial aid to any foreign national who is not already resident in the State Party concerned, on an equal footing with its nationals. However, it requires that nationals of other States Parties who already have a resident status in the State Party concerned, receive equal treatment with nationals in the matters of both access to vocational education (Article 10§1) and financial aid for education (Article 10§4). Those States Parties who impose a permanent residence requirement or any length of residence requirement on nationals of other States Parties in order for them to apply for financial aid for vocational education and training are in breach of the Charter.

The Committee notes that the report does not provide information on this point. The Committee, therefore, concludes that the situation in Luxembourg is not in conformity with Article 10§4 of the 1961 Charter, on the ground that it has not been established that foreign nationals, lawfully resident, have equal access to financial assistance for studies.

In its previous conclusion (Conclusions XXI-1, 2016), the Committee requested information on whether time spent in vocational training should be included in the normal working hours. It also requested information on measures taken to evaluate vocational training programmes for young workers, including apprenticeships, and on the participation of employers' and workers' organisations in the supervision process. The report does not provide the requested information. The Committee, therefore, reiterates its previous question.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 10§4 of the 1961 Charter on the ground that it has not been established that foreign nationals, lawfully resident, have equal access to financial assistance for vocational training.

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

Paragraph 1 - Education and training for persons with disabilities

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

It previously found (Conclusions XXI-1(2016)) that it was not established that persons with disabilities enjoyed effective and equal access to the mainstream training system.

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

Discrimination based on disability is prohibited by the Constitution (Article 11§5), the Criminal Code (Article 454), the 2006 Acts on Equal Treatment and on Public Service, as well as by the Labour Code (see Conclusions XXI-1(2016)).

As regards more specifically the right to education, any child aged three or over and living in Luxembourg is entitled to attend school, under the Compulsory Schooling Act of 6 February 2009. The report states that the inclusion of children with special educational needs (SEN) in mainstream schools is ensured whenever it is possible, in agreement with the parents (see also the Act of 14 March 1973 setting up specialised educational services). The report also refers to new Acts of 29 August 2017 (amending the Act of 25 June 2004) concerning secondary schools, and of 20 July 2018, setting up a National Inclusion Commission and specialised psycho-pedagogical competence centres for school inclusion, which replace the previous special schools. The new centres include: the Centre of Speech Therapy; the Centre for the Development of Vision Skills; the Centre for Motor Development; the Centre for Intellectual Development; the Centre for the Development of Children and Young People with Autism Spectrum Disorders; the Learning Development Centre, for pupils suffering from dyslexia, dyscalculia, dyspraxia; the Centre for children and young people with high potential, for so-called 'gifted' or intellectually precocious pupils; the Centre for Socio-Emotional Development, for students with behavioural and cognitive disorders; the Agency for Transition to Independent Living, to accompany and support young people and their parents in the new stages of their working lives.

In the education field, the law does not provide a definition of disability, but it refers to "pupils with special needs" (see Conclusions XX-1(2012)). The Committee notes from the Eurydice database that this notion includes children with impairments or disabilities that, if compensated through reasonable accommodation as foreseen by law (modified law of 15 July 2011), will not prevent them from attaining the objectives of their educational level ("learners with special educational needs"), and "*children subject to compulsory education and who, for reasons of their mental, character, sensorial or motor characteristics, cannot attain the core skills defined for primary education within the regular time span*" ("learners with specific educational needs", as defined by the modified Act of 6 February 2009 on the organisation of elementary education). These categories are included in the more global notion of "children with

difficulties" (as defined by grand-ducal regulation of 25 March 2009), which covers "*children who encounter physical, psychological or behavioural difficulties in their social environment or on the level of their school career*" (including for example, also children at risk of drop out).

According to the Academic Network of European Disability Experts (ANED) report on disability assessment (2017-2018), the identification of SEN children in the field of education follows a combination of impairment, functional and environmental approaches. The Committee notes from the Government's report and the Eurydice database that, since 2018, SEN children are supported and monitored at local, regional and national level: specialised primary school teachers (*instituteurs spécialisés dans la scolarisation des élèves à besoins spécifiques*, I-EBS) detect needs, monitor the pupils' schooling and liaise with the pedagogical team, the regional inclusion commission and the parents; at each regional governing body of primary education, specialised support teams (ESEB, *équipes de soutien des élèves à besoins éducatifs particuliers ou spécifiques*) establish a first diagnosis in cooperation with the schools and teachers concerned, then support and monitor the children's schooling if the schools' management resources are not sufficient; at national level, eight competence centres manage the schooling of children (and young people) for whom the local and regional solutions prove insufficient. The Committee recalls from its previous conclusions (Conclusions XX-1(2012) and XXI-1(2016)) that SEN pupils may attend, according to their possibilities and needs, mainstream education, while receiving support and assistance; special education combined with complementary classes in mainstream education for certain activities; or special education. The Act of 15 July 2011 provides for accommodation measures and special arrangements for exams (Act of 22 July 2011 concerning access of SEN children to school and professional qualifications).

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 (2006) 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 UNCRPD 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 report states that mainstreaming of SEN children is prioritised in Luxembourg at all levels of education, and that less than 1% of the total school population are in special education. The Committee notes however from the data (concerning 2016-2017) presented in the 2018 report of the European Agency for special needs and inclusive education (EASIE European Agency Statistics on Inclusive Education, 2018 Dataset Cross-Country Report), that while the proportion of SEN pupils in education is very low, many of them are in special education: in primary education, children with recognised SEN were 1.5% of the school population; 50% of them were in mainstream inclusive education, 26.36% in special classes and 23.64% in special schools while in secondary education, students with SEN were 1.52% of the school population, 40.59% of them were in mainstream inclusive education, 27.15% in special

classes and 32.26% in special schools. The latest ANED report on the European Semester, published in 2019 but concerning 2018, points out the lack of data on SEN children attending schools outside Luxembourg and the lack of recent data on early school-leaving of SEN children. Data from the Ministry of Education indicate that the number of SEN children in inclusive educational settings passed from 757 in 2015/2016 to 780 in 2016/2017 and those in special schools passed from 918 in 2015/2016 to 875 in 2016/2017. According to the report, 806 SEN pupils were in special schools in 2019 (out of the reference period) and special support was organised by the competence centres in mainstream schools for 503 SEN pupils.

The Committee takes note of the information provided in the report concerning the 2018 reform and the role, in this context, of specialised teachers (I-EBS), inclusion commissions in primary and secondary schools (CI and CIS) and specialised support teams (ESEB). According to the report, this reform has notably improved the access of SEN children to mainstream secondary education. The Committee takes also note of the information provided concerning access to vocational training.

In order to assess the effective equal access of children with disabilities to education and vocational training, 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 complete compulsory school
- the number of children with disabilities who do not complete compulsory school, as compared to the total number of children who 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.

Measures aimed at promoting inclusion and ensuring quality education

The Committee notes from the report that the governmental programme 2018-2023 provides for the reinforcement of specialised staff, for example by setting up specialised support teams (ESEB) in each secondary school (*lycée*). The report states that additional specialised teachers to support and assist SEN pupils in mainstream schools are being recruited at local level; that 20 new specialised professionals (psychologists, pedagogical experts, graduated educators) have been recruited, bringing to 30 the number of staff of specialised support teams which are available for 18 secondary schools (*lycées*) in 2019 (out of the reference period), in addition to the staff from the Psycho-social and school support services (SePAS) and socio-educational services (SSE). The report adds that 113,5 additional posts have also been created since 2018 in the competence centres. The Committee takes note of the information provided about the staffing plans under way, it asks the next report to provide updated information on the implementation of the programme. It also asks how the adequacy of staff dealing with SEN children (in terms of numbers and competences) is assessed, in order to ensure that it corresponds to the needs.

The report indicates that the reasonable accommodation commission (CAR) granted accommodation measures to 159 students in 2015/2016, 172 in 2016/2017 and 2017/2018 and 168 in 2018/2019. Between 2011 and 2020, 45.1% of these measures concerned pupils suffering from dyslexia, dyscalculia, dyspraxia (521 requests out of 1153), 17.4% concerned pupils with attention deficit disorder (201 requests), 9.6% concerned pupils with chronic health problems (111 requests), 6.5% concerned pupils with autistic spectrum disorders (75 requests), 5.9% concerned pupils with speech impairments (69 requests), 4.5% concerned pupils with (motor) disabilities (53 requests), 3.9% concerned pupils with sight impairments (46 requests), 3.2% concerned pupils with mental health problems (38 requests), 2.1% concerned pupils with hearing impairments (25 requests) and 2% concerned epileptic pupils (24 requests). As regards the type of accommodation measures granted, the report states that, in 2018/2019, there were 155 requests for human support, 149 requests for additional time during tests, 117 requests for technological aids and 21 requests for adapted evaluation tests.

The report suggests that secondary schools with lesser resources (in terms of staff and material) available to implement reasonable accommodation measures are more reluctant to request such measures for their students. The Committee asks the next report to clarify this point and indicate whether schools or children with special or specific educational needs are eligible for financial assistance to cover any additional costs associated with reasonable accommodation.

The Committee asks the next report to comment on the points of concern expressed by the Committee on the Rights of Persons with Disabilities (CRPD Committee) in its Concluding observations of 2017 about "*a) the absence of a legally defined procedure for the provision of reasonable accommodation and for assistant support staff in classrooms, in public and private schools; (b) The misunderstanding of reasonable accommodation as reflected in Act of 15 July 2011, which undermines the process of identifying the response to individual requirements in dialogue with the person concerned and limits reasonable accommodation to existing options set out by the Act; (c) Negative attitudes towards disability in education and low expectations of students with disabilities; (e) The insufficient training of teachers, support teachers and non-teaching personnel on inclusive education; (f) The absence of data and indicators to monitor the quality of education and inclusion of students with disabilities, and accessibility standards of school infrastructures, information and communications, including information and communications technology*".

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 previously noted (Conclusions XX-I(2012) that in the case of disagreement about the type of education suited to their child, parents can seize the Minister of Education who will mandate a group of experts to assess the request and take a decision. It furthermore noted that, although the 2006 Act on Equal treatment applied in principle to all case of discrimination on grounds of disability, there were doubts as to its effective scope and effectiveness. The Committee accordingly requested information confirming that the legislation offers effective protection in case of discrimination on ground of disability in the field of education, and considered that in the absence of such information, there would be nothing to show that the situation is in conformity with Article 15§1 of the 1961 Charter on this point.

The report does not provide any new element on this issue. On the other hand, the Committee notes that the CRPD Committee in its Concluding observations of 2017 noted with concern that "*the institutions responsible for the monitoring of discrimination, including the Consultative Council of Human Rights and the Centre for Equal Treatment, lack the requisite legal jurisdiction to deal with complaints relating to discrimination, particularly multiple discrimination or discrimination in the private sector, or the power to remedy complaints*". It also expressed concern about the "*insufficient resources of these bodies to carry out their mandates, including effective sanctions and remedies*" and noted that the absence of cases of discrimination on grounds of disability could be partly explained by the "*lack of awareness by persons with disabilities of existing mechanisms to defend their rights*". The Committee asks the next report

to comment on this issue, and to provide updated information on the remedies available in case of discrimination on ground of disability with respect to education (access to education, including the provision of adequate assistance or reasonable accommodation) including information on relevant case law.

It considers in the meantime that it has not been established that effective remedies are available to children with disability/SEN who believe they have been discriminated against or who believe they have been denied the assistance they require in the field of education.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 15§1 of the 1961 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 education.

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 Luxembourg.

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 found that the situation was not in conformity with Article 15§2 of the 1961 Charter on the ground that it had not been established that persons with disabilities were guaranteed effective equal access to employment (Conclusions XXI-1(2016)).

Legal framework

Discrimination based on disability is prohibited by the Constitution (Article 11§5), the Criminal Code (Article 454), laws introduced in 2006 on equal treatment and on the status of public officials, and the Labour Code (see Conclusions XXI-1(2016)).

The report confirms that there is no standard definition of disability in Luxembourg, but that the National Employment Agency (ADEM) recognises two administrative categories: “disabled worker” (SH) and “worker with reduced work capacity (CTR)”. The first category refers to a person with disabled worker status whose work capacity is reduced by least 30% and who, at the same time, has been assessed as fit for work in the mainstream labour market or a sheltered workshop. The second refers to a person who has been identified as eligible for redeployment by the Joint Committee, which assesses whether workers who are incapable of carrying out their previous occupation may be redeployed either in a different position within the same company or in another company. The Committee previously noted that disabled worker status was assessed and established by a medical committee (see Conclusions XX-1(2012) and XXI-1(2016) relating to Article 15§1). In response to its question on what was being done to move away from the medical definition of disability towards a more social approach, the report referred to the definition proposed in a draft law on the accessibility of public places, public highways and multi-occupancy residential buildings, which had been tabled in 2018. While taking note of this information, the Committee notes that the draft law has not yet been adopted and does not directly concern employment. It also notes that according to an official government publication (Practical Guide to Disability in the Workplace, 2020), approximately 30% of applications for disabled worker status are rejected. It asks for clarification in the next report regarding the extent to which the assessment of disability for employment purposes takes into account the personal and environmental factors affecting the individual.

On several occasions (see Conclusions XIX-1(2008), XX-1(2012) and XXI-1(2016)), the Committee asked for further information on the scope of the duty to provide reasonable accommodation, the associated criteria for eligibility and examples of the relevant case-law. In this respect, the report states that an employer recruiting a worker with disabilities may be entitled to reimbursement of costs relating to reasonable accommodation and, on the other hand, that the worker with disabilities may apply for financial assistance for additional expenses related to transport and the purchase of highly specialised professional equipment. The ADEM decides whether these costs are to be covered in part or in full on the basis of a reasoned opinion from the Occupational Counselling and Redeployment Panel. The Committee takes note of this information but asks for more details in order to assess whether the conditions and criteria in place allow effective access to reasonable accommodation and to establish the remedies available.

The report refers to a new law which allows employers to seek assistance from an approved expert when employing and integrating one or more workers with disabilities and/or in occupational redeployment. The Committee notes that this law was adopted on 1 August 2019 and came into force on 1 February 2020, i.e. outside the reference period. It asks the next report to provide an initial review (supported by the relevant statistics) of the law's implementation and impact on the effective integration into mainstream employment of workers with disabilities or in external redeployment.

Access of persons with disabilities to employment

In response to the Committee's repeated request for comprehensive statistics on the total number of persons of working age with disabilities, those working in mainstream or sheltered employment and those registered as unemployed or looking for work, the report states that it is not possible to establish the exact number of people with disabilities living in Luxembourg and that the available statistics and figures are unreliable. Firstly, it explains that only the recipients of the various relevant benefits and allowances are counted in the statistics – which the report does not, however, provide – as eligibility for such allowances depends on a variety of criteria for recognising disability. Secondly, referring to the estimates of the World Health Organisation (WHO) and Germany, the report infers that the ratio of the disabled population to the total population varies between 9.4% and 15%. Based on the lower rate, it estimates that there are approximately 53 000 persons living in Luxembourg with a degree of disability of at least 50%. Thirdly, the report refers to the many types of disability, which are not clearly defined, and the fact that the sources of information and statistics on disability are based on varying definitions. In conclusion, the report states that a survey of persons with disabilities in Luxembourg was planned for 2020 (outside the reference period), with a view to taking stock of existing benefits and measures and assessing the need for further measures.

Regarding statistics and figures on the employment of persons with disabilities, the report states that out of 9 865 persons with disabilities of working age, 4 920 were in employment on 31 December 2018, i.e. roughly half; of these, 75% were employed in the mainstream labour market and 25% in sheltered workshops. According to the ADEM's public statistics for December 2018, out of a total of 15 186 jobseekers living in Luxembourg, 3 375 had disabilities or limited working capacity. In addition, there were 1 870 non-resident jobseekers (cross-border workers) with limited working capacity. The report also states that on 31 December 2018, 3 006 persons were receiving the severe disability allowance granted to those unable to work for a living.

The Committee takes note of this information and asks for updated statistics in the next report to assess how the situation developed during the reference period. It also asks for clarification from the authorities about the developments observed and, in particular, the results of the planned survey (see above) and any information about follow-up measures.

Measures to promote and support the employment of persons with disabilities

The Committee takes note of the various measures to promote and support the employment of persons with disabilities outlined in its previous conclusions and in the report.

The report explains that based on the opinion of the Occupational Counselling and Redeployment Panel, the ADEM decides which measures must be taken to integrate or reintegrate workers with disabilities in the workplace. Several of these measures are aimed at providing guidance and training to persons with disabilities, support for job market integration through personal capability assessments and tools and services for integration (such as information sessions, skills profile development, an interactive online platform called JobBoard and the COSP-HR occupational integration programme), work experience schemes (for example, the DUOday open doors event in 2018 and other professional training courses) and different types of contracts to promote job market integration or reintegration (basic training, subsidised employment and back-to-work contracts, etc.).

The Committee notes from the report that since 2017, 421 people with disabilities or in occupational redeployment have benefited from skills assessment, careers guidance and training programmes under the COSP-HR project, 96 have been referred for internships or other special measures and 120 have found employment. However, the report does not say how the other measures were implemented nor does it describe the impact they had.

The ADEM can take a range of measures, including ensuring the partial or full coverage by the State of the costs of adapting workplaces and access to them, providing suitable professional equipment, participating in transport costs, paying for training costs and even wages. For the latter, the report specifies that such participation cannot be less than 40% and can be increased to 100% of the wages paid to the employee with disabilities, including the employer's share of social security contributions. It can also cover self-employed social insurance contributions for self-employed persons who have been granted disabled worker status and who continue their work. Financial support may be provided to workers as a compensatory allowance, incentive bonus or rehabilitation bonus. It may also include compensation for temporary employment or reimbursement for employers for the cost of additional leave.

As regards the implementation of these measures, the report states that in 2016, 9 self-employed persons with disabled worker status received reimbursement for social security contributions (compared to 8 in 2014); 10 workstation adaptations were subsidised (compared to 8 in 2014); 5 workers with disabilities applied for reimbursement of transport costs (compared to 2 in 2014); 180 employers submitted a claim for reimbursement of wage costs; and 627 employers received reimbursement for the cost of additional leave granted to employees with disabilities (compared to 837 in 2014). The Committee takes note of these figures but also notes that the information provided about these measures does not enable it to monitor their progress during the reference period. The Committee notes that the figures provided, as such, do not allow to infer whether the measures referred to have enabled the inclusive employment of a greater number of persons with disabilities during the reference period. It accordingly asks the next report to clarify this, in the light of updated data.

The Committee previously noted that in the public sector, employees with disabilities must account for 5% of the total workforce, while for private employers, the quota depends on the size of the company. Having noted that quotas were not being respected despite the sanctions in place, the Committee had requested information on the results achieved in implementing measures to improve quota compliance and had again asked for information on the degree of such compliance (Conclusions XX-1(2012) and XXI-1(2016)). On these points, the report states that the State undertakes to set aside an annual budget of 2 000 hours for the recruitment of persons with disabled worker status. It adds that the number of posts (on a full-time equivalent basis) for workers with disabilities in the public sector has increased from 35 in 2015 to 92 in 2018, but in the absence of reliable data, it cannot confirm how many of these posts are actually occupied by persons with disabilities and therefore to what extent the statutory quotas are complied with. In this regard, the report explains that rather than ensuring compliance with an abstract and quantitative criterion, the onus is on effectively including people with disabilities in the ordinary working environment, providing them with support and ensuring workplace access. Furthermore, the report does not contain any information regarding compliance with statutory quotas in the private sector.

The Committee wishes to point out that Article 15 does not require the introduction of quotas but, when a country's domestic legislation provides for such measures, the effectiveness of that system will be taken into account when determining whether the national situation complies with Article 15§2. It also considers that, insofar as the purpose and aim of the Charter is to protect rights not merely theoretically, but also in fact, conformity with the Charter cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. As the report still does not demonstrate compliance with these criteria in Luxembourg, the Committee considers that the situation has not yet been brought into

conformity with the 1961 Charter on the ground that it has not been established that persons with disabilities are guaranteed effective equal access to employment.

Remedies

The Committee has previously noted that the Anti-Discrimination Act set out the remedies available to anyone who feels that they have been discriminated against (see Conclusions XIX-1 (2008)), that a Centre for Equal Treatment (CET) was established in 2008 to inform, advise and provide assistance to victims and that it was also possible to file a complaint with the Labour Inspectorate (see Conclusions XX-1 (2012)). The Committee asks for updated information in the next report on relevant judicial or out-of-court decisions on employment-related discrimination against persons with disabilities, including with regard to recognising disabled worker status and providing reasonable accommodation. 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

The Committee concludes that the situation in Luxembourg is not in conformity with Article 15§2 of the 1961 Charter on the ground that it has not been established that persons with disabilities are guaranteed effective equal access to employment.

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

Paragraph 1 - Applying existing regulations in a spirit of liberality

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

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

Paragraph 2 - Simplifying existing formalities and reducing dues and taxes

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

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

Paragraph 3 - Liberalising regulations

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

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

Paragraph 4 - Right of nationals to leave the country

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

