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# EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2020

**LATVIA**

*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 Latvia, which ratified the Revised European Social Charter on 26 March 2013. The deadline for submitting the 6<sup>th</sup> report was 31 December 2019 and Latvia submitted it on 14 February 2020.

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

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

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

Latvia has accepted all provisions from the above-mentioned group except Articles 18§2 and 18§3.

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

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

– 4 conclusions of conformity: Articles 1§1, 10§1, 10§4 and 24.

– 3 conclusions of non-conformity: Articles 1§2, 18§4 and 20.

In respect of the other 6 situations related to Articles 1§4, 10§3, 10§5, 15§1, 15§2 and 15§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 Latvia under the Revised Charter.

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

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

- the right of elderly persons to social protection (Article 23),
- the right to protection against poverty and social exclusion (Article 30).

The deadline for submitting that report was 31 December 2020.

Conclusions and reports are available at [www.coe.int/socialcharter](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 Latvia.

### **Employment situation**

According to Eurostat, the GDP growth rate dropped from 4% in 2015 to 2.4% in 2016 before rising to 3.3% in 2017 and to 4% in 2018, a growth rate that is well above the average for the 28 European Union (EU) member States (2% in 2018).

The overall employment rate (persons aged 15 to 64 years) increased from 68.1% in 2015 to 71.8% in 2018, exceeding the EU 28 average (68.6% in 2018).

The employment rate for men increased from 69.9% in 2015 to 73.6% in 2018, which is practically the same as the EU 28 average (73.8% in 2018). The employment rate for women rose from 66.4% in 2015 to 70.1% in 2018, exceeding the EU 28 average (63.3% in 2018). The employment rate for older workers (55 to 64-year-olds) increased from 59.4% in 2015 to 65.4% in 2018, which is higher than the EU 28 average (58.7% in 2018). On the other hand, youth employment (15 to 24-year-olds) decreased from 34.5% in 2015 to 33.1% in 2018, which is below the EU 28 average (35.3% in 2018).

The overall unemployment rate (persons aged 15 to 64 years) decreased from 10.1% in 2015 to 7.6% in 2018 but remained above the EU 28 average (7% in 2018).

The unemployment rate for men fell from 11.4% in 2015 to 8.5% in 2018, exceeding the EU 28 average (6.7% in 2018). The unemployment rate for women decreased from 8.8% in 2015 to 6.6% in 2018, which is below the EU 28 average (7.2% in 2018). Youth unemployment (15 to 24-year-olds) dropped from 16.3% in 2015 to 12.2% in 2018, which is below the EU 28 average (15.2% in 2018). Long-term unemployment (12 months or more, as a percentage of overall unemployment for persons aged 15 to 64 years) fell from 45.5% in 2015 to 42% in 2018, which is below the EU 28 average (43.4% in 2018).

The proportion of 15 to 24-year-olds “outside the system” (not in employment, education or training, i.e. NEET) decreased from 10.5% in 2015 to 7.8% in 2018 (as a percentage of the 15 to 24-year-old age group), which is below the EU 28 average (10.5% in 2018).

The Committee notes the favourable trends in labour market indicators during the reference period (a general increase in the employment rate and falling unemployment).

### **Employment policy**

In its report, the Government states that one of the main aims of the Inclusive Employment Guidelines 2015-2020 adopted in May 2015 was to reduce barriers to employment for jobseekers from vulnerable groups. To implement these guidelines, various measures were taken during the reference period, for example to improve the legal framework, widen the coverage of active labour market policies and target them better, and develop cooperation and partnerships (in particular between the National Employment Agency and municipal social services).

With regard to the legal framework, the Committee notes the amendments made in 2016, 2017 and 2018 to Regulation No. 75 of 25 January 2011 on procedures for organising and financing active labour market measures and measures to prevent and reduce unemployment. These amendments aimed, *inter alia*, to: facilitate the social and professional integration of the long-term unemployed, strengthen jobseekers' skills (training), include people with refugee or alternative status in the Subsidised Employment programme and extend support for regional mobility. The Committee also notes the Social Enterprise Law adopted in October 2017, which aims to improve the quality of life and promote the employment of groups at risk of social exclusion through social entrepreneurship.

Regarding active labour market measures, the Committee notes the emphasis given to strengthening the skills of jobseekers and the unemployed through training. The Committee also takes note of the information provided in the report on labour market measures to assist vulnerable groups (e.g. young people, the long-term unemployed, persons with disabilities, older workers, migrants and refugees).

In particular, three projects were implemented under the Youth Guarantee scheme. These included projects run by the State Employment Agency on Active labour market policy measures for young jobseekers and by the State Education Development Agency on the Implementation of vocational education programmes for young people not in employment and training. The reported statistics indicate, *inter alia*, that between 2014 and 2018, the State Employment Agency's project provided approximately 169,000 young people with career guidance, 138,000 with an individual job search plan, 47,100 with measures to acquire job search and basic labour market skills, 9,300 with non-formal training, 5,800 with vocational education and 1,600 with subsidised employment. In addition, approximately 19,000 young people participated in an initial vocational training programme in 2014-2015 as part of the State Education Development Agency's project. The Committee notes that according to the European Commission, in 2018, 40.9% of young people had left the Youth Guarantee scheme with an offer (of employment, training, etc.) within four months of joining it, which was below the EU average of 46.7% (Youth Guarantee country by country, Latvia, October 2020). The Committee requests that the next report provide updated information on the labour market measures specifically implemented to support young people, including those who are NEET (specifying the type of measure and the number of beneficiaries or participants by year).

According to European Commission data, public expenditure on labour market policies (as a percentage of GDP) remained relatively stable at 0.56% in 2015 and 0.59% in 2017. The percentage allocated to active measures was also stable (at 0.11% in 2015 and 0.13% in 2017).

Lastly, the Committee takes note that the OECD has evaluated the impact of the active labour market policies implemented under the Inclusive Employment Guidelines 2015-2020. Focusing on the long-term unemployed and those at risk of long-term unemployment, the OCDE report assesses the effectiveness of various measures including training, employment subsidies and a programme to promote regional mobility (Evaluating Latvia's Active Labour Market Policies, OECD, 15 May 2019). The Committee requests that the next report provide information on the follow-up to the OECD's recommendations.

### *Conclusion*

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

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

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

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

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

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

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

The Committee recalls that Latvia has accepted Article 15§2 of the Charter and Article 20 of the Charter. For aspects concerning discrimination in employment on grounds of disability and gender, the Committee thus refers to its Conclusions on these provisions.

The Committee previously examined the legislation prohibiting discrimination in general terms (Conclusions 2016, Conclusions XX-1 (2012), Conclusions XIX-1 (2008)). The Committee notes that the Labour Law provides protection against all forms of discrimination in all aspects of employment relationships and in both the public and private sectors, including state civil service relationships and contract work carried out by self-employed persons. This includes the establishment of such relationships and concerns the following grounds: race, skin colour, age, disability, religious, political or other convictions, national or social origin, property or marital status, sexual orientation or other circumstances (Country Report on Non-discrimination 2019, European Equality Law Network).

The current report indicates that in November 2018, some provisions of the Labour Law were amended as follows: Articles 29 ('Prohibition of Differential Treatment') and 32 ('Job Advertisements') were supplemented by Part 3 and Part 2 respectively, prescribing that in case of a dispute, if an employee denounces conditions which may serve as a basis for his/her direct or indirect discrimination based on language, the employer has the obligation to prove that the differential treatment is based on objective circumstances not related to the language proficiency of the employee, or that the proficiency in a specific language is an objective and substantiated precondition for performance of the respective work or employment. Furthermore, Article 56 ('Content and Limits of Orders of an Employer') was supplemented by Part 4 providing that an employer does not have the right to ask that the employee be proficient in a specific foreign language if its use does not fall within the scope of work duties. If the use of a foreign language is not necessary when performing work duties, the employer does not have the right to forbid the employee from using the official language .

In reply to a previous question of the Committee concerning the Latvian language requirements (see Conclusions 2016), the report provides detailed information regarding the relevant legal framework and the measures taken in practice. The Committee takes note of the projects developed during the reference period by the Latvian Language Agency which provided asylum seekers and third country nationals with Latvian language training. The European Social Fund project aims to offer support for teachers at all levels of education, including providing ethnic minority teachers with a capacity to develop the Latvian language skills for professional purposes. Moreover, the Latvian Language agency provides freely available materials for teaching Latvian as a second or foreign language, e-courses,

interactive exercises which develop the language skills as well as video materials about the Latvian language and culture.

With regard to specific measures taken to counteract discrimination in the employment of migrants and refugees, the Committee takes note of the information provided in the report in particular under Article 1§1. It notes the measures taken by the State Employment Agency (hereinafter the SEA), such as career guidance consultations and Latvian language courses, which are available to foreign nationals along with Latvian nationals, as provided by the Law on Support for Unemployed Persons and Persons Seeking Employment. The report indicates that in 2017, the subsidised employment programme was extended to include persons who have acquired either the refugee status or the alternative status. It is reported that the SEA has been implementing a project entitled “The labour market integration of refugees and persons who have been granted alternative status in Latvia” aiming at improving employment prospects for asylum seekers, refugees and persons with alternative status (subsidiary protection) and their social and economic inclusion. In addition, in 2018, the SEA launched services of the Latvian language mentor at work for refugees and persons with alternative status, in order to facilitate the acquisition of professional vocabulary and social adaptation at work; in 2018, 7 persons were involved in such a measure, 5 persons have completed training. Data provided in the report indicate that during the period 2016-2018, the SEA registered 156 refugees and persons with alternative status; 54 refugees or persons with alternative status found a job with the assistance of the SEA (40 of them, including 34 men and 5 women, were still working – in supermarkets, storehouses, woodworking etc. at the end of 2018). The SEA has developed cooperation with 118 employers who would like to hire refugees and persons with alternative status.

The report further indicates that migrants can obtain information about working and living conditions and vacancies on the European Job Mobility Portal of European Employment Services (EURES) and also by contacting EURES consultants at the SEA.

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 encompasses an appropriate adjustment of the burden of proof which should not rest entirely on the complainant, as well as the setting-up of a special, independent body to promote equal treatment. The Committee explicitly requested information on remedies for this examination cycle.

With regard to judicial or administrative procedures available, the Committee notes that complaints alleging discrimination in employment can be dealt with by courts or the State Labour Inspectorate (SLI).

The report provides information on the activity of the State Labour Inspectorate which has the right to issue warnings and orders to employers as well as administrative fines on employers. The report describes the sanctions and the level of fines applicable in case of violations. The Code of Administrative Offences (Article 204) provides for a fine ranging from 140 EUR to 700 EUR in case of violation of prohibition of discrimination. The report provides the number of complaints received by the SLI during the reference period and the number of violations found in the area of discrimination in employment. For example, in 2017, only 1 violation was found for a number of 37 complaints received while in 2018, 5 violations were found by the SLI for a number of 88 complaints received.

The Committee notes from the Country Report on Non-discrimination 2019 of the European Equality Law Network that the State Labour Inspectorate has imposed sanctions predominantly in cases involving job advertisements that are discriminatory on grounds of gender, age or ethnicity. The same source indicates that the sanctions imposed have ranged from a warning to a fine between EUR 70 and EUR 535. The majority of fines range from EUR 200 to EUR 300.



The report indicates that according to Article 149<sup>1</sup> of the Criminal Law, discrimination based on ethnic, national, racial or religious origin, as well as any other type of discrimination is sanctioned with deprivation of liberty for a maximum of one year, or three years in some cases, temporary deprivation of liberty, community service or a fine. The Committee notes that, according to the 2019 Country Report on Non-discrimination of the European Equality Law Network, to date, Article 149<sup>1</sup> of the Criminal Law has not been applied to any case.

With regard to compensation, the Committee takes note from the Country Report 2019 of the European Equality Law Network that between 2005 and 2018, there was over a dozen known discrimination cases before the courts that resulted in a favourable outcome for the victim (at least 11 concerning discrimination on grounds of gender, three on grounds of disability, one on age and one on ethnic origin), the amounts awarded ranged from EUR 428 to EUR 7,142. For example, in 2015, in a discrimination case on grounds of disability (dismissal), the claimant was awarded EUR 1,422 and in 2017, in a discriminatory dismissal case on grounds of disability, the claimant was awarded EUR 1,000.

With regard to the ceiling of compensation, the same source indicates that there is no maximum amount for damages under the Civil Law. The Labour Law, the Consumer Rights Protection Law and the Administrative Procedure Code provide for compensation in discrimination cases.

The report further provides information on the remedies available to employees in case of unlawful/discriminatory termination of employment. The Committee notes that in accordance with Articles 122, 124 and 126 of the Labour Law, if an employee is of the opinion that he/she has been dismissed without a justified reason, he/she is entitled to bring an action in court. An employee, who has been dismissed from work on the basis of a notice of termination declared invalid by an employer, shall be reinstated in his or her previous position by court order. Moreover, an employee who has been dismissed illegally and reinstated in his/her previous position shall be granted average earnings for the whole period of forced absence from work by court order as well. Compensation for the whole period of forced absence from work shall also be awarded in cases where, upon the request of the employee, a court terminates employment relationships, even though a basis for the reinstatement of an employee in his/her previous position exists.

The Committee notes from the 2019 Country Report on Non-discrimination of the European Equality Law Network that a three-month time limit applies when filing discrimination complaints before the courts in employment cases as opposed to a two-year limit in other cases of labour disputes. The Committee notes from the same source that, for example, in a case alleging gender discrimination in 2018, the Supreme Court decided that the claim for compensation for non-pecuniary damage was dependent on establishing discrimination in the first place, which was subject to a three-month limit, hence the claim for non-pecuniary damages fell under the same limit. The Committee asks for more examples of practice demonstrating how and in which particular situations/cases the courts apply the three-month time limit rule. It reserves its position on this point.

As regards the burden of proof in cases of alleged discrimination in employment, the Committee notes in the 2019 Country Report on Non-discrimination of the European Equality Law Network that the provision on the shift in the burden of proof is included in the Labour Law. The same source indicates that in 2018, the Labour Law was amended to include a provision on the shift in the burden of proof in alleged discrimination cases on grounds of language.

With regard to equality bodies, the Committee noted previously that since March 2007, the tasks of the specialised body in discrimination have been performed by the Ombudsman's Office (Conclusions 2016). It asked for information on the resources (staff members and funding) of the Ombudsman allocated to non-discrimination/equality issues, and its awareness-raising activities in discrimination and combating all forms of discrimination in employment (Conclusions 2016).

The report provides information regarding the total budget of the Ombudsman's office during the reference period (see table no. 18 of the report). It also indicates that the Ombudsman does not have estimates of the amounts spent directly on researching and analysing the issue of discrimination in the work environment, and such records are not kept by the Office. On average, 3-4 employees deal with applications and research on discrimination in the work environment. However, in addition to this topic, these employees also carry out research on other issues. The report adds that where appropriate, a greater number of staff have been involved in both research as well as public awareness raising and information activities on the subject.

The Committee takes note of the information provided in the report concerning the number and outcome of complaints regarding discrimination in the work environment received by the Office during the reference period. The Ombudsman Office found that the complainant had been treated in a discriminatory manner in 3 cases in 2016, 6 cases in 2017 and 5 cases in 2018. The report further states that during the reporting period, the Ombudsman did not exercise his statutory right of access to court in cases of discrimination. Most often, individuals exercised their right of access to court themselves, or through their representatives.

As regards discrimination on grounds of nationality, the Committee previously noted that under the Latvian legislation, in order to become a sworn advocate in Latvia, an individual must possess Latvian nationality (Conclusions 2012). The Committee concluded that the situation in Latvia was not in conformity with Article 1§2 of the Charter on the ground that the restrictions imposed on non-EU nationals to become advocates were excessive, which constituted a discrimination on grounds of nationality (Conclusions XX-1 (2012) and 2016). The report indicates that according to Article 4 of the Advocacy Law, the following persons may work as advocates in Latvia: (1) sworn advocates; (2) assistants to sworn advocates; and (3) citizens of the European Union Member States who have obtained the qualification of an advocate in one of the European Union Member States. The report further indicates that foreign advocates, except for advocates of the European Union Member States, may practice in Latvia in accordance with the international agreements on legal assistance, which are binding on Latvia (such agreements have not been concluded).

The Committee recalls that under Article 1§2 of the Charter, all nationals of States Parties should be able to become advocates if they fulfil the requirements with regard to language and competencies, without any restrictions on grounds of nationality. The Committee notes that according to the report, no international agreements on legal assistance have been concluded, and that the restrictions on third country nationals which it found to be excessive have not changed (Conclusions 2016, Conclusions XX-1 (2012)). The Committee therefore maintains its conclusion of non-conformity on this point.

## **2. Forced labour and labour exploitation**

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

Referring to the Court's judgment of *Siliadin v. France*, the Committee has in the past drawn the States' attention to the problem raised by forced labour and exploitation in the domestic environment and the working conditions of the domestic workers (Conclusions 2008, General Introduction, General Questions on Article 1§2; Conclusions 2012, General Introduction, General Questions on Article 1§2). It considers that States Parties should adopt legal

provisions to combat forced labour in the domestic environment and protect domestic workers, as well as take measures to implement them.

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

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

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

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

The Committee notes that the 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 report states that Latvia ratified the 2014 Protocol to the 1930 ILO Forced Labour Convention on 7 December 2017. No other information is provided on the criminalisation of forced labour and labour exploitation.

The Committee notes from the 2017 GRETA Report on Latvia that Section 154 of the Criminal Law criminalises human trafficking, including for the purposes of forced labour or services, slavery or other similar forms thereof (debt slavery, serfdom or the compulsory transfer of a person into dependence upon another person), and servitude (Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human

Beings by Latvia, second evaluation round, GRETA (2017)2, 23 March 2017). GRETA considered that the Latvian authorities should take further measures to ensure that cases of trafficking in human beings are investigated proactively, prosecuted successfully and result in effective, proportionate and dissuasive convictions, including by providing further training to police officers and prosecutors in the investigation and prosecution of cases of human trafficking for the purpose of labour exploitation, including through cooperation with other relevant actors and countries (par. 181). In this respect, the Committee notes from other sources that from 1 June 2015 to 14 March 2018, 11 criminal proceedings were initiated regarding trafficking, while prosecution was initiated for four cases. Since 2015, most convicted persons have received conditional sentences (ILO-CEACR, Direct Request – adopted 2018, published at the 108<sup>th</sup> ILC session (2019), Forced Labour Convention, 1930 (No. 29)).

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

The Committee therefore asks that the next report provide information on the application of Section 154 of the Criminal Law in practice, particularly with regard to labour exploitation in the forms of forced labour or services, slavery and servitude. The report should provide information (including statistics, examples of case law and specific penalties effectively 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 current report states that no specific measures have been taken to assess the prevalence of the problem of forced labour. While noting that no specific inspections of the State Labour Inspectorate (SLI) regarding labour exploitation were carried out during the reference period, it stresses that one of the SLI's operational priorities is the detection of unregistered employed persons in sectors such as agriculture and construction. The SLI prepares annual plans defining a certain number of inspections to be carried out in economic sectors with higher risk of unregistered employment. The Committee notes from the abovementioned GRETA Report that the SLI carries out inspections of all economic sectors in order to check the respect of labour conditions, occupational safety and health standards. Inspections may be carried out without prior notice and according to the information provided to GRETA, all labour inspectors have been trained in the clear understanding of the "Guidelines to Prevent Abusive Recruitment, Exploitative Employment and Trafficking of Migrant Workers" developed by the Council of the Baltic Sea State (para. 63). The Committee notes however that GRETA urged the Latvian authorities to take additional measures to improve the identification of victims of trafficking, including by increasing efforts to proactively identify victims of trafficking for the purpose of labour exploitation, by reinforcing the capacity of labour inspectors and providing the SLI with the resources and training required (para. 112).

The Committee therefore asks for up-to-date information in the next report on any measures taken to reinforce the capacity of the SLI to prevent and detect cases of labour exploitation, in

the light of GRETA's concerns. The report should also indicate the number, if any, of victims of forced labour identified during the next reference period as a result of the SLI's inspections.

The Committee further notes from the 2017 GRETA Report on Latvia that a planning document in the field of action against trafficking in human beings entitled "Guidelines for the Prevention of Trafficking in Human Beings 2014-2020" was approved by the Latvian Government on 21 January 2014. It serves as a national action plan and includes activities in the areas of information, awareness-raising and research, among others. The Ministry of the Interior is expected to submit a final report on the implementation of the Guidelines to the Cabinet of Ministers by 30 June 2021. The Committee requests to be informed on the implementation of the abovementioned Guidelines regarding specific measures aimed at preventing human trafficking for the purpose of labour exploitation.

No information has been provided in the report on whether Latvian legislation includes measures designed to force companies to report on action taken to investigate forced labour and exploitation of workers among their supply chains and requires that every precaution be taken in public procurement processes to guarantee that funds are not used unintentionally to support various forms of modern slavery. The Committee accordingly reiterates its request on this point.

### **Protection of victims and access to remedies, including compensation**

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

The report does not provide any relevant information on this point. The Committee accordingly asks for information in the next report on the number of 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 by the authorities (protection against retaliation, safe housing, healthcare, material support, social and economic assistance, legal aid, translation and interpretation, voluntary return, provision of residence permits for migrants) and on the duration of such assistance.

The Committee notes from the report that according to the Civil Law, any wrongful act causing harm shall give the person who suffered the harm the right to claim satisfaction from the person who infringes the law. If the unlawful acts are criminal offences against a person's life, health, morals, freedom or dignity, it is presumed that the victim of such acts suffered moral injury. In this connection, 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, not only moral damage but also 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 Latvia on 7 December 2017), which requires Parties to provide access to appropriate and effective remedies to victims, such as compensation, irrespective of their presence or legal status in 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§3 of the Charter, inspectors must be authorised to inspect all workplaces, including residential premises, in all sectors of

activity (Conclusions XVI-2 (2003), Czech Republic, relating to Article 3§2 of the 1961 Charter; Statement of Interpretation of Article 3§3 (i.e., Article 3§2 of the 1961 Charter)). It considers that such inspections must be clearly provided for by law and sufficient safeguards must be put in place to prevent risks of unlawful interferences with the right to respect for private life.

In reply to the questions raised in its previous conclusion as regards forced labour in the domestic environment (Conclusions 2016), the report indicates that the State Labour Inspectorate (SLI) is entitled to carry out inspections, if it receives any information on violations of employment legal relationships. Depending on the type of violation detected, administrative, criminal or civil liability may be enforced. According to the information provided to GRETA, in the case of registered employment of domestic workers, labour inspectors are entitled to inspect private homes, jointly with the municipal police (GRETA Report, para. 63).

The Committee asks that the next report provide more detailed information on the number of inspections actually carried out in respect of registered domestic workers during the next reference period, and the number, if any, of victims of forced labour or labour exploitation identified as a result.

### **“Gig economy” or “platform economy” workers**

The report states that no specific measures have been taken to protect workers in the “gig economy” or “platform economy”. These workers are being protected like any other workers. In addition, the report refers to the Order of the Cabinet of Ministers No. 209 “On Conceptual Report – On the Regulatory Framework for Services in the Field of Economic Cooperation” adopted on 30 April 2019 (outside the reference period), according to which it is planned to ensure the implementation of the principles of the “sharing economy” (platform economy) in sectorial legal enactments.

The Committee asks for more detailed information on how the envisaged regulations will affect workers in the “gig economy”. It also asks whether these workers are regarded as employees or self-employed workers, whether the powers of the SLI include the prevention of exploitation and unfair working conditions in this particular sector (and if so, how many inspections have been carried out) and whether these workers have access to remedies, particularly 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*

The Committee concludes that the situation in Latvia is not in conformity with Article 1§2 of the Charter on the ground that the restrictions imposed on non-EU nationals to become advocates are excessive, which constitutes a discrimination on grounds of nationality.

**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 Latvia.

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

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

The Committee however deferred its conclusion on continuing vocational training (Article 10§3) (Conclusions 2020). For the same reasons, 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 - Technical and vocational training; access to higher technical and university education*

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

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 2016).

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

In the information submitted regarding Article 10§2, the authorities state that during the reference period, the Vocational Education Law was amended and now defines workplace training as one of the ways in which vocational teaching and training (full-time teaching, distance teaching, self-learning and on-the-job learning) are implemented. The report describes the way in which on-the-job learning is set up and implemented. An advisory body (Convention) has been established to facilitate co-operation between training institutions and employers and improve strategic planning in line with labour market trends.

In addition, several measures taken to implement the legislative framework described in the previous conclusions (see Conclusions 2016) have made it possible to increase gradually the number of students joining vocational courses (by modernising infrastructure, improving curriculum quality, co-operating with the private sector, implementing a project designed to improve the management of vocational institutions and the skills of their staff, etc.).

The Committee notes that the authorities have continued to implement the reforms intended to optimise the network of vocational training institutions (reducing the numbers from 60 in 2010 to 21 schools and 7 colleges in 2018). It notes that a status of "Vocational Education Competence Centre" may now be granted and that projects to modernise these institutions have been implemented.

The Committee notes that three national projects co-ordinated by the Ministry of Welfare and the Ministry of Education and Science have been implemented for young people not in education, employment or training ("NEETs"), as part of the European Youth Guarantee scheme.

### ***Measures taken to integrate migrants and refugees***

According to the information provided by the authorities regarding Article 1§1, an Action Plan for the Relocation and Reception of Persons in Need of International Protection was launched in 2015 by the State Employment Agency. In this connection, the Agency has prepared a programme, in co-operation with a group of 118 employers, focusing on the integration into the labour market of refugees and persons who have been granted subsidiary protection. The aim of the programme is to improve their job opportunities and their economic and social inclusion by providing, in particular, specialised language classes (teaching professional vocabulary). Between 2016 and 2018, 156 persons registered with the State Employment Agency and 54 of them found a job.

The report also states that the vocational training courses offered by the State Employment Agency are open to all unemployed persons who have registered with this body and meet the conditions for accessing them, regardless of their nationality. The authorities state, with respect to Article 1§4, that in 2018, approximately 1600 foreigners registered with the State Employment Agency as unemployed persons or jobseekers.

### *Conclusion*

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

**Article 10 - Right to vocational training**

*Paragraph 2 - Apprenticeship*

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

## **Article 10 - Right to vocational training**

### *Paragraph 3 - Vocational training and retraining of adult workers*

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

In its previous conclusion (Conclusions 2016), the Committee deferred its conclusion.

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

In its previous conclusion (Conclusions 2016), the Committee requested information on the types of continuing vocational training and education available for unemployed persons, the overall participation rate of persons in training and the total expenditure. It also asked what the activation rate is, i.e. the ratio between the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures.

According to the information provided in the report under Article 10§1 of the Charter, vocational training includes vocational continuing education programmes and vocational improvement and upskilling programmes for the unemployed and job-seekers, funded by the state budget, the European Social Fund and the Youth Employment Initiative. These programmes, as well as non-formal training programmes, are organised by the State Employment Agency (SEA) in collaboration with both public and private training institutions and employers. According to the report, the planning of such programmes is based on an evidence-based approach, taking into account labour market demand and labour market development forecasts, and on the agreement of social partners. The length of training programmes ranges from 60 to 160 hours within non-formal training programmes, while for advanced vocational and upskilling from 160 to 320 hours and for vocational training from 480 to 1280 hours. The participation in these programmes lasts up to 6 months and full-day participation is usually required, while unemployed persons can participate once within two-years period in vocational training programmes, and twice a year in non-formal programmes.

The Committee takes note of the information provided under Article 10§1 on further training programmes and in particular of the programmes offering training at the employer’s request and training at the employer, available to the registered unemployed, as well as the Youth Guarantee Initiative, available to young persons aged between 15 and 29 that are not in education, employment or training.

The Committee notes from the report that the total expenditure for active labour market policies was gradually increased from €23.502.316 in 2015 to €34.598.945 in 2018, peaking in 2017 at €36.034.753. The number of individual persons participating in active labour market policy measures fell from 99.161 in 2015 to 91.757 in 2018, while it increased in 2016 and 2017.

In respect of the activation rate, according to the information provided in the report under Article 10§3, the rate of participation of unemployed in active labour market policy measures is 11%, while the same rate for job-seekers stands at 6%. Moreover, approximately 6% of unemployed participate in vocational education programmes and 3.5% in vocational upskilling programmes. The rate of participation in non-formal education is 16%. The data provided by EUROSTAT, presented in the report, indicate that the rate of adult participation in learning for the reference period was 5.7% in 2015, 7.3% in 2016, 7.5% in 2017 and 6.7% in 2018. The Committee considers that the attendance of unemployed and job-seekers in programmes of vocational training is low. It asks what measures the government plans to undertake in order to increase the participation of unemployed persons in training and re-training programmes.

In its previous conclusion (Conclusions 2016), the Committee requested information on the sharing of the burden of cost of vocational training among public bodies, unemployment

insurance systems, enterprises and households as regards continuing training. According to the report, for the implementation of vocational training programmes, training vouchers are used, the value of which ranges from €360 to €1.220, depending on the type of the programme (non-formal training, vocational training, advanced vocational training) and for the vocational training programmes, on the length of participation. The money of training vouchers is paid directly to the institutions providing training. At the same time, a daily stipend of €5 is paid to participants.

The Committee notes from the report that data from 2018 indicate that the employment rate of registered unemployed participants in vocational continuing education programmes stood at 45% and for vocational improvement programmes at 40%.

The Committee notes from the information provided in the report under Article 10§1, that measures in place to enhance the competitiveness of unemployed and employed at risk of unemployment, include individual consultation and group lessons aiming at the psychological support of participants, as well as at developing skills, such as interview and communications skills, CV writing, and negotiation skills. The Committee reiterates its targeted question included in the appendix to the letter of 27 May 2019, and requests information on strategies and measures (legal, regulatory and administrative frameworks, funding and practical arrangements) in place to ensure skilling and re-skilling in the full range of competencies (in particular digital literacy, new technologies, human-machine interaction and new working environments, use and operation of new tools and machines), needed by workers to be competitive in emerging labour markets.

The Committee notes that the report provides information on vocation training for registered unemployed and job-seekers. It, therefore, asks what measures are in place to ensure the right of the employed persons to vocational training.

#### *Conclusion*

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

## **Article 10 - Right to vocational training**

### *Paragraph 4 - Long term unemployed persons*

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

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

According to the report in 2018, the rate of long-term unemployment was 3.1% as a share of the labour force and 25.1% among the registered unemployed (unemployed for at least 12 months). The share of the long-term unemployed is higher among men than women (58% compared to 42%). 1% of the registered long-term unemployed are young persons (15-24 years old).

The Committee notes that according to the report programmes for the long-term unemployed are organised in the same framework as for the other registered unemployed and target groups. In addition however there are specific targeted measures aimed at this group.

The activities offered to the long-term unemployed have been intensified over time and additional activities have been introduced. In 2016, a new active labour market measure “Activation programme for the long term unemployed”, co-funded by the European Social Fund, was developed. This measure aims to increase the effectiveness and targeting of Active Labour Market Policies (ALMP) programmes, facilitate the social integration of the long-term unemployed (unemployed for at least 12 months) and improve their ability to find suitable jobs, thus minimising risks of social exclusion. The project will run until 2022.

Support such as individual and group consultations, assessment of professional suitability for persons with a disability or health problems, motivation programmes, provision of a mentor to provide practical and psychological support is also available to long term unemployed persons under the project. The total number of persons receiving support was 53,964 in 2016, 54,318 in 2017 and 53,711 in 2018.

The report states that as regards the participation of the long-term unemployed in ALMP activities, out of the total number of unemployed who started active employment measures during the reference period, 46.1% (28,859) in 2015, 44.5% (30,993) were long term unemployed, in 2016, 45.4% (47,201) in 2017 and 46.7% (42,864) in 2018 (a person may have participated in more than one measure). Participation in ALMP activities has a positive impact on the employment outcomes of the target group: 64.6% or 7,807 of all the long-term unemployed who found a job in 2018 (12,090 long-term unemployed) became employed after completing an ALMP measure. In 2017 – 63.8% (8 207), in 2016 – 60.5% (8,687) and in 2015 – 59.1% (8,417 long-term unemployed).

The Youth Guarantee programme (2014-2018) was launched to address the problem of youth unemployment, in particular to support young people aged 15-29 who are not in education, employment and training (NEET). The aim of this programme was to establish a long-term and comprehensive approach to the timely activation of young people, by providing job-search support, employment and training measures or a return to the education system.

The number of participants in the Youth Guarantee programme from 1 January 2014 to 1 December 2018 amounted to 29,526 persons. At the same time, an average of 176,839 young unemployed benefited from vocational guidance services, 137,651 young people received job search assistance and 47,104 took part in short job search training.

In its previous conclusion (Conclusions 2016), the Committee asked whether in Latvia equal treatment with respect to access to training and retraining for the long-term unemployed was guaranteed to non-nationals.

It notes from the report that the SEA's vocational training is available to all unemployed persons, including foreigners (EU, EEA, Swiss nationals and third-country nationals), who are registered with the SEA and comply with the set criteria for involvement in the respective measures.

*Conclusion*

The Committee concludes that the situation in Latvia is in conformity with Article 10§4 of the Charter.

## **Article 10 - Right to vocational training**

### *Paragraph 5 - Full use of facilities available*

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

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

The previous conclusion was deferred pending receipt of information on fees and financial assistance for training, including for higher education. The Committee also asked whether foreign nationals, lawfully resident, have equal access to financial aid for studies (Conclusions 2016).

In response, the report indicates that in conformity with the Regulation of the Cabinet of Ministers on Scholarships adopted on 24 August 2004, scholarships are available for:

- students enrolled in higher education programmes, having the required number of points and studying in state-funded study places;
- students enrolled in vocational education programmes according to the number of state-funded study places available;
- students enrolled in vocational education programmes according to the number of municipality-funded study places available.

As far as vocational education is concerned, the report states that it is possible for students to receive a monthly scholarship. A vocational education institution may grant a larger scholarship if a person is orphaned or without parental care. It may grant an increased scholarship for outstanding academic achievement and social activity.

The Law on Vocational Education and the Cabinet of Ministers' Regulation on Scholarships applies equally to nationals and legally resident foreign nationals studying in vocational education programmes.

Regarding higher education, scholarships under the selection procedure are available to students who have successfully passed all the necessary tests and who have received the required number of credit points. A higher education institution may award a scholarship for the entire duration of the course or a single scholarship once per semester. If two or more students qualify for the same scholarship, it is first awarded to a student with disabilities, an orphan or a child (up to 24 years of age) without parental care, a student from a family with low resources, a student from a family with three or more children or a student with one or more children.

According to the report a citizen of the European Union, a citizen of the European Economic Area or a citizen of the Swiss Confederation and a permanent resident of the European Union, who has a valid residence permit, have the same rights as Latvian nationals to study at a higher education institution or college.

The Committee asks whether this includes equal treatment as regards fees and financial assistance, whether there is a length of residence requirement for permanent residence, further it asks what the situation is for nationals of states parties to the Charter not nationals of the EU, EAA or Switzerland.

Pending receipt of the information requested the Committee defers its conclusion. If the requested information is not provided in the next report there will be nothing to establish that the situation is in conformity with the Charter.

The Committee recalls that according to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees admitted to reside in any capacity other than being a student or a



trainee, or having authority to reside by reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training.

In its previous conclusion (Conclusions 2016) the Committee asked what measures have been taken to evaluate vocational training programmes for young workers, including the apprenticeships. In particular, it requested information on the participation of employers' and workers' organisations in the supervision process.

According to the report, the Adult Education Management Council, which consists of representatives of ministries and other organisations involved in adult education as well as representatives of social partners and sectorial experts, has approved a list of relevant educational programmes. However, the report does not provide information on measures taken to evaluate vocational training programmes for young workers, including apprenticeships.

The Committee requests that the next report provide information on measures taken to evaluate vocational training programmes for young workers.

#### *Conclusion*

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

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

### *Paragraph 1 - Vocational training for persons with disabilities*

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

The previous conclusion was deferred (Conclusions 2016).

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

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

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

### **Legal Framework**

The Committee recalls from its previous conclusions (Conclusions 2016) that under the General Education Law as amended in 2011, schools are required to provide support measures (accommodation) both during the education process and also during state tests and examinations and to develop individual education plans for learners with disabilities in mainstream settings. According to the report the Cabinet of Ministers Regulations [No 543 “Requirements for Admission of Students with Special Needs in Mainstream Education Programmes implemented by General Education Institutions” 2018] define the provision of educational services for children with special needs and the procedure for identifying such needs. They also ensure the availability of appropriate support measures (accommodation) during state tests and examinations.

The Regulations provide for the enrolment of children with disabilities or Special Educational Needs (SEN) into general education institutions either in general classes or in classes for children with disabilities/ SEN.

The Regulations also provide that certain special education programmes may be implemented only in an integrated way in general education institutions.

Parents have the right to choose what kind of education institution their child will attend, but the child should have a statement from the State Pedagogical Medical Commission or municipal commission about an appropriate special education programme.

*The report also states that the Implementation Guidelines for the UN Convention on the Rights of Persons with Disabilities (2014-2020) approved by Cabinet of Ministers Order No. 564 of 22 November 2013 are aimed at providing children with disabilities with a quality basic and secondary education and promoting their inclusion in all education levels and types according to their disabilities.*

As regards the definition of disability the report states that in the context of inclusive education children SEN are defined broadly; children may have SEN without a disability status.

The Committee has previously stressed the importance of moving away from a medical definition of disability towards a social definition. An early example is that endorsed by the World Health Organisation in its International Classification of Functioning (ICF 2001) which focuses on the interaction of health conditions, environmental factors and personal factors.

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

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

### **Access to education**

According to the report in 2014/2015 there were 4, 153 students with special needs included in general education institutions either studying in general education programmes or special education programmes. In the school year 2015/2016, there were 4, 587 such students and in 2016/2017 the corresponding figure was 5, 090, in 2017/2018 it was 5, 264.

The report states that the inclusion of children with disabilities/SEN in general education institutions has increased; in 2015/2016, 38.72% of the total number of students with special needs were included in general education institutions, in 2018 this figure increased to 42.14%.

Data from the report suggests that the majority of children with disabilities/SEN attending general education institutions have special education programmes.

According to data provided in the European Agency Statistics on Inclusive Education (EASIE) 2018 Dataset Cross-Country Report, in primary and lower secondary schools (providing compulsory education), 6.71% of children were recognised as having SENs; of these 39.05% were in inclusive education, 12.51% were in special classes in mainstream schools and 48.44% in special schools.

The Committee notes the progress made in providing inclusive education, however, it notes that the majority of children with disabilities attend special schools or are educated in special classes in general education schools.

In this respect the Committee notes that the UN Committee on the Rights of Persons with Disabilities in their Concluding Observations on the initial report of Latvia [CRPD/C/LTA/CO/1, 10 October 2017], expressed concern that the majority of children with disabilities attend special schools or are encouraged to be schooled at home as a permanent solution due to the lack of reasonable accommodation and accessibility, including physical accessibility, in the majority of mainstream schools.

The Committee asks for the Governments comments on this.

The Committee notes that the report provides information on the number of children with disabilities in institutional care, (3.1% in 2018). The Committee asks for information on the educational provision for such children.

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 SEN are entitled to any financial support to cover any additional costs that arise to ensure the removal of obstacles to their inclusion in education.

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

According to the report guidelines for the implementation of the UN Convention on the Rights of Persons with Disabilities have been developed, one of the four strands of action with specific objectives concerns education. Developing and implementing inclusive education is a key objective. On 22 May 2014, the Parliament approved the medium-term policy planning document Education Development Guidelines 2014-2020 for the implementation of the principle of inclusive education and reduction of the risk of social exclusion which set out measures for the promotion and strengthening of inclusive education in Latvia.

The Committee asks for information on the outcome of these guidelines.

In addition the report states that in 2016 a working group was established within the Ministry of Education and Science to ensure the implementation of inclusive education. The working group agreed, inter alia, to expand and clarify the set of support measures that an education institution should provide to a student with SEN and to ensure that support measures shall be provided also for students who do not have a decision of the State or Municipal Pedagogical Medical Commission, but whose special needs have been identified by support specialists of an education institution.

Initiatives have also been taken to ensure that teachers receive appropriate training in order to ensure the inclusion of children with SEN into general education. The National Centre for Education (NCE) organises workshops and educational support teams for teachers working with students with special needs. Further NCE provides educational institutions with material for work with children with special needs.

As regards teaching materials the NCE within the in the framework of the European structural funds project “Competence Approach to Learning Process” develops and provides appropriate teaching materials.

In 2017, with the support of the European structural funds, the Ministry of Education and Science started the implementation of a project “Support to reduce early school leaving” with an aim of reducing early school leaving for children and young people, including those with special needs and disabilities. Within the project it is planned to provide support to students in 611 mainstream and vocational education institutions, covering at least 80% of municipalities by 31 December 2022.

The Committee asks to be informed of the outcome of this project as it concerns children with disabilities/ SEN.

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 Center (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, (General Comment No. 4, (2016), 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 recalls from previous conclusions (Conclusions 2016) that the law ratifying the UN Convention on the Rights of Persons with Disabilities of 28 January 2010 established the Ombudsman as the independent mechanism responsible for promoting, protecting and monitoring the implementation of the Convention. It deals with complaints of discrimination against persons with disabilities and is authorised to represent victims in the administrative courts. The Committee asked the next report to provide further information on this point. The Committee also wished to receive information on the right of individuals to seek remedies before the courts in cases of discrimination on the ground of disability in education and training (including examples of relevant case-law and follow-up) (Conclusions 2016).

The report provides information on the cases and their outcome submitted to the Ombudsman alleging discrimination in education; in 2015 3 cases, in 2016 10 cases 2017 8 cases and in 2018 5 cases. The majority of the complaints concerned the lack of inclusive education. The report states that during the reference period, the Ombudsman did not exercise his statutory right to defend the rights and interests of a private individual in an administrative court (such right is ensured if necessary in the public interest).

The report further suggests that parents may also bring proceedings before the courts.

The Committee asks the next report to provide updated information on the remedies available in the case of discrimination on the ground of disability with respect to education (including access to education, including the provision of adequate assistance or reasonable accommodation) and the relevant case-law.

## ***Conclusion***

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

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

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

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

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 on conclusions of non-conformity and deferrals.

The previous conclusion was deferred (Conclusions 2016).

### ***Relevant legal framework***

According to the report there were no significant changes to the legislation governing the employment of persons with disabilities.

The Committee recalls from previous conclusions that the Labour law provides protection against discrimination inter alia on grounds of disability and includes an obligation on employers to make reasonable accommodation (Conclusions 2012, 2016).

The Committee notes from information provided in the report under Article 1.1 that the Social Enterprise Law was adopted on 12 October 2017 and came into force on 1 April 2018. The purpose of the Social Enterprise Law is to improve the quality of life and to promote the employment of groups at risk of social exclusion through social entrepreneurship. The Committee asks the next report to provide further information on this as it concerns the employment of persons with disabilities.

The report states that the determination of disability in Latvia is regulated by the Disability Law (in force since 2011) and the Regulations of the Cabinet of Ministers No 805 “Regulations Regarding the Criteria, Time Periods and Procedures Determining Predictable Disability, Disability, and the Loss of Ability to Work” of 23 December 2014 (in force since 2015). According to the Disability Law, a disability is a long-term or non-transitional very severe, severe or moderate level limited functioning which affects a person’s mental or physical abilities, ability to work, self-care and integration into society. For the persons over the age of 18, the degree of limited functioning is evaluated and the loss of ability to work is determined as a percentage.

Since 2015, WHO International Classification of Functioning, Disability and Health categories are used to determine disability, which means that during the disability determination process functional capacity is assessed together with medical indications/diagnoses.

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

According to the report the number of persons with disabilities increased over the reference period; in 2015 8.9% of the population had a disability, this increased to 10% in 2018. The proportion of persons with a disability of working age increased from 24% to 25% in 2018. The Committee notes from the information in the report that the number of persons with a disability in employment has increased slightly over the reference period; 20,474 in 2015 to 23,806 in 2018.

The proportion of persons with disabilities registered with the State Employment Agency has increased over the reference period as compared to the overall number of registered unemployed.

The Committee notes that the number of persons with disabilities participating in subsidised employment measures (sheltered employment) increased on 2016 and 2017 but declined significantly in 2018. The Committee asks for the reasons for this decrease.

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 from EU-SILC data, employment rates of persons with disabilities are higher in Latvia, and unemployment rates lower, than the EU average. However, this positive tendency masks serious challenges for some groups, in particular for those with severe impairments. According to national labour data, the actual number of registered persons with disabilities who are working has risen, from 41,832 in 2015 to 46,697 in 2017. However, it should be noted that the total number of persons recognized as disabled has also increased from 176,181 (2015) to 187,798 in 2017).

According to the data from the Public Employment Services 8,282 persons were registered as disabled and unemployed in June 2018 (9,441 in 2016 and 8,234 persons with disabilities in 2017). In this data, 24.8% of all long-term unemployed persons were recognized as disabled (while 58% were older workers).

The Committee notes from the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities (CRPD/C/LVA/CO/1, 2017) that the UN Committee expressed concern about the 'lack of progress in improving employment for persons with disabilities in the open labour market, particularly for those with intellectual disabilities' and 'continuity of the subsidized employment measures after termination of support from European structural funds'.

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

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 as well information on the general rate of progression of persons with disabilities from sheltered employment to the ordinary labour market.

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

The Committee previously requested information on how the reasonable accommodation principle is implemented in practice (including statistics showing the number of requests for reasonable accommodation measures, the number of requests granted, and the costs refunded and examples of case-law) and asks whether the reasonable accommodation requirement has prompted an increase in employment of persons with disabilities on the open labour market (Conclusions 2016). The Committee notes from data provided in the report the number of workplaces adapted for persons with disabilities during the reference period, 181 were adapted in 2016, 134 in 2017 and 81 in 2018. No further information is provided on reasonable accommodation. The Committee repeats its request for more complete information, requests for reasonable accommodation apart from workplace adaptations, trends in costs refunded, examples of any case law.

The Committee refers to its previous conclusions for an overview of the measures aimed at encouraging employment of persons with disabilities in the labour market, including workplace adaptations and wage subsidies. It also refers to information provided in the report under Article 1.1.

The Committee notes from the ANED report (Academic Network of European Disability Experts) on the European Semester that Guidelines on the Convention on the Rights of Persons with Disabilities Implementation plan 2018-2020 were adopted. The Guidelines include specific policy measures with quantifiable targets in some areas. In the field of work and employment the main policy measures are to:

- review the procedure on subsidised employment and implement with the improved subsidised employment measures;
- launch a social business in Latvia;



- improve the measures for better integrating the persons with disabilities into the labour market by advising employers on the employment of persons with disabilities, adapting the working environment and ensuring working conditions according to employee`s functional disorders,

In addition, the Plan includes information and training measures for employers and employees on issues regarding social inclusion, discrimination, inclusive environmental promotion.

The Committee asks the next report to provide information on the implementation of the measures contained in the Guidelines as well as other measure in place to support the inclusion of persons with disabilities in employment in particular on the open labour market, including information on the number of beneficiaries.

### ***Remedies***

The Committee previously requested information on the judicial and non-judicial remedies provided for in the event of discrimination on the ground of disability and on relevant case-law (Conclusions 2016).

According to the report in cases of discrimination, also concerning the employment of persons with disabilities, there is a right to apply to court or to the State Labour Inspectorate. The Labour law provides for a shift in the burden of proof in discrimination, it also provides that compensation may be awarded in the for pecuniary loss and moral damage.

The report provides no examples of relevant case law. The Committee repeats its request for this information. 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 defers its conclusion.

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

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

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

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

The previous conclusion was deferred (Conclusions 2016).

### ***Relevant legal framework and remedies***

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

The Committee previously asked for information on anti-discrimination legislation covering housing, transport, telecommunications, culture and leisure, together with its content and any judicial or non-judicial remedies in the event of discrimination, and a description of any relevant case-law.

No information is provided in the report on this point. The Committee repeats its request for this information. It notes that should this information not be provided in the next report there will be nothing to establish that the situation is in conformity with the Charter.

### **Consultation**

In response to the Committee’s previous question regarding consultation the report states that in order to promote the rights of persons with disabilities and develop co-operation between institutions and involved non-governmental organisations in decision-making related to the integration of persons with disabilities, the Ministry of Welfare in 1997 created the National Council of Disability Affairs. The Council is composed of five sectoral ministers, the Chair of the Latvian Association of Local Governments, the Ombudsman, the Chair of the Public Utilities Commission, the Director of the Social Integration Fund, the Chair of the Free Trade Union Confederation of Latvia, as well as representatives of several non-governmental organisations representing persons with disabilities. The Council meets 4 times a year.

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

#### ***Financial and personal assistance***

The Committee previously requested that the next report provide details on all benefits and other forms of financial assistance available to persons with disabilities (Conclusions 2016). The Committee takes note of the various benefits available to persons with disabilities.

According to the current report the Ministry of Welfare has developed Guidelines for the development of social services for 2014-2020. The aim of these guidelines is to develop the provision of social services tailored to the individual needs of persons with disabilities to promote independent living.

In 2015, Latvia began implementing the de-institutionalisation process. An Action Plan was developed and approved by the Cabinet of Ministers. The process is supported by European

Structural Funds. The planning phase has been completed, in 2019 (outside the reference period) the development of the infrastructure for the provision of community-based social services began.

The Committee recalls from its previous conclusion that under Article 12 of the Disability Law (which entered into force on 1 January 2011), persons with disabilities are entitled to the services of an assistant within Latvia paid from the state budget for up to 40 hours a week (Conclusions 2016).

The current report also refers to another assistance scheme; it states that since 2016, the number of hours personal assistance services to get to work, to rehabilitation or to attend an educational institution have been increased to 20 hours a week.

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

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

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

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

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

### ***Technical aids***

According to the Law on Social Services and Social Assistance State, persons with disabilities have the right to technical aids on the basis of an opinion of a medical practitioner. The provision of technical aids is financed by the State budget. However the recipient may be required to pay a contribution to the cost. The Committee asks what the level of the contribution is required.

In 2016, technical aids (National rehabilitation centre Vaivari, Latvian Association of the Deaf and Latvian Association of the Blind) were provided to a total of 16 687 persons, in 2018 – 9 406 persons. The State budget funding for technical aids increased from € 4 290 115 in 2016 to € 7 252 968 in 2019.

In 2016, Regulations No 1474 on the provision of technical aids were amended by expanding the range of available technical aids.

### ***Housing***

The report states that, persons with mental impairments who have difficulties to live independently, have the right to receive group housing services. A group house is a house

where a person with mental impairments is provided with housing, individual support and, if necessary, social care. The costs of group housing are covered by the municipality.

The Committee asks the next report to provide information on the progress made to phase out institutions (including information on measurable targets clear timetables and strategies to monitor progress) and whether there is a moratorium on any new placements in residential institutions. It asks what proportion of private and public housing is accessible. It asks for information about the existence accessible sheltered of housing.

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

### ***Mobility and transport***

According to the report, all construction projects must comply with the regulations on accessibility which also apply to residential property and public spaces.

In 2018, the Ministry of Welfare developed Guidelines on accessibility for public buildings and premises and public outdoor spaces. The Guidelines were developed in co-operation with the Latvian umbrella body for disability organisations SUSTENTO and in consultation with non-governmental organisations representing the interests of persons with disabilities.

The Cabinet of Ministers has approved an action plan “Creation of accessible environment in Latvia 2019-2021” (outside the reference period). This action plan aims to assess the availability and accessibility of public and municipal buildings and services from 2020. The Committee asks the next report to provide information on the implementation of the Plan and its impact.

According to the report, progress towards accessibility varies across public transport. For example, significant progress has been achieved in respect of regional buses. In 2018, 54% of regional buses were adapted for the transportation of persons with disabilities. Progress has been made also with respect to the railways and a transport by air. The Committee takes note of the information provided on the measures taken in this field.

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

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

### ***Communication***

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

### ***Culture and leisure***

The Committee notes that the State institution “Culture Information Systems Centre” has developed a translation system ( Hugo.lv) featuring text-to-speech and speech-to-text for general public use. It also is available also as a web service.

The Committee requests that the next report provide updated information on access by persons with disabilities to cultural, leisure and sporting activities.

### ***Conclusion***

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

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

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

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

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

The Committee points out that it deferred its previous conclusion (Conclusions 2016) pending receipt of the information requested on the legal framework guaranteeing the right of nationals to leave the country and on what restrictions applied in this respect.

In reply, the report states only that nationals enjoy the right to leave the country to engage in gainful employment and that no reform is planned in this area. The report also describes the measures intended to encourage Latvian nationals to return to the country.

The Committee notes that there is no information in the report about current legislation restricting or guaranteeing the right of nationals to leave the country.

The Committee asks again what legal framework guarantees the right of nationals to leave the country. It asks for a full list of practical circumstances in which Latvian citizens may be prevented from leaving the country, and their legal basis. It also asks whether people whose right to leave the country is restricted have legal remedies to challenge such decisions. In the meantime, the Committee concludes that the situation is not in conformity with Article 18§4 of the Charter on the ground that it has not been established that there is a legislative framework guaranteeing the right of nationals to leave the country without restriction.

*Conclusion*

The Committee concludes that the situation in Latvia is not in conformity with Article 18§4 of the Charter on the ground that it has not been established that there is a legislative framework guaranteeing the right of nationals to leave the country without restriction.

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

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

The Committee notes that this report responds to the targeted questions on this provision (20(c)), which relate specifically to equal pay (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Employment, training and equal opportunities”). The Committee will therefore focus specifically on this aspect. It will also assess the replies to all findings of non-conformity or deferral in its previous conclusion.

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

#### ***Legal framework***

The report states that amendments to the Labour Law came into force in 2015 providing for additional paid leave for employees (both women and men) with children. During the reporting period, the regulatory framework aimed at reconciling work and family life was further improved. Regarding pay transparency, on 1 November 2018, amendments were made to Article 32, Part 3 (Job Advertisements). The amended Clause 2, Part 3 now prescribes that a job advertisement shall include the total gross monthly or yearly salary of the relevant position or the envisaged amplitude of the hourly wage rate

The Committee had already considered in its previous conclusion that the legislation guarantees the right to equal pay for equal work or work of equal value (Conclusion Article 4§3, 2018). The Committee therefore concludes that the situation in this respect is in conformity with the Charter.

#### ***Effective remedies***

The Committee recalls that domestic law must provide for appropriate and effective remedies in the event of alleged pay discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court. Effective access to courts must be guaranteed for victims of pay discrimination. Therefore, proceedings should be affordable and timely. Moreover, any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and from being sufficiently dissuasive is contrary to the Charter. The burden of proof must be shifted meaning that where a person believes she or he has suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus should be on the defendant to prove that there has been no infringement of the principle of non-discrimination (Conclusions XIII-5, Statement of interpretation on Article 1 of the 1988 Additional Protocol). Employees who try to enforce their right to equality must be legally protected against any form of reprisals from their employers, including not only dismissal, but also downgrading, changes to working conditions and so on.

The report states that in the case of violation of the employment rights, an employee has a right to apply to court or to the State Labour Inspectorate. There are no ceilings for compensation in cases of pay discrimination on the grounds of sex.

The Committee notes that, according to the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: Latvia 2019 that formally, the national courts are accessible for victims of discrimination. However, victims of discrimination do not always take their case to court. One of the reasons for this is the cost of legal services, which is high, and another is the fear of victimisation. This report further observes that there is no case law or opinions of the Ombudsperson related to the issues of direct or indirect gender pay discrimination.

As regards the shift of the burden of proof, the report states that the shift is guaranteed in sex discrimination cases. The Committee had concluded in its previous assessment that the legislation provides for the shift in the burden of proof and that the situation is in conformity with the Charter in this respect (Conclusion Article 4§3, 2018).

The Committee reiterates the request that the next report include information on the number, nature and outcome of complaints of equal remuneration addressed by the judicial and administrative bodies. It further asks how the principle of shifting of the burden of proof is applied in practice, for example, if it is systematically applied in the cases related to pay discrimination.

### ***Pay transparency and job comparisons***

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

As regards *pay transparency* in the labour market and notably the possibility for workers to receive information on pay levels of other workers and available information on pay, there is no information in the report. According to the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: Latvia 2019, there are no specific rules or procedures to provide wage transparency. Formally, workers's representatives or trade unions have the right to require information on pay levels according to Article 11(1) of the Labour Law. However, there is no information on any case where such a right would have been used for the purpose of ensuring the equal pay principle. Moreover, Latvia has not taken any measure provided by the Recommendation on pay transparency measures. There is no explicit provision requiring comparators. The case law demonstrates nevertheless that a real comparator is required in direct discrimination cases.

The Committee asks therefore that the next report provide further information on pay transparency and on comparable jobs and pay level accessible to employees. It reserves its position in this respect.

The Committee also recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter and does so therefore every two years (under thematic group 1 "Employment, training and equal opportunities", and thematic group 3 "Labour rights"). Articles 20 and 4§3 of the Charter require the possibility to make job comparisons across companies (See in this respect Complaints 124 to 138, *UWE v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden*, 5-6 December 2019).

As regards *comparison across companies*, in its previous conclusion, the Committee requested to provide more information on this issue, in particular, if the pay comparison is possible outside one company, for example, if such company is a part of a holding company



and the remuneration is set centrally by such holding company. The Committee asks that the next report reply to this particular point.

### ***Enforcement***

The report does not provide any information on this respect. According to the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: Latvia 2019, the Latvian Ombudsperson covers the supervision of all human rights, defined either by Latvian law or by binding international agreements, so it covers all possible non-discrimination grounds. This report states that the Ombudsperson is granted sufficient competence to deal with gender equality issues. However, since the foundation of this body/institution in 2006, and it has not represented any case since 2011.

The Committee asks that the next report provide further information about how equal pay is ensured, notably, the work of monitoring developed by equality bodies and the Labour Inspectorate in this respect.

### ***Obligations to promote the right to equal pay***

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

The report refers to the measures adopted under the Plan for the Promotion of Equal Rights and Opportunities for Women and Men for 2018–2020, approved by the Cabinet of Ministers on 4 July 2018, even though it does not cover years 2015-2016 and 2017. It also refers to educational, child care and career counselling measures and details statistics.

Concerning the gender pay gap, the Committee notes from Eurostat that gender pay gap stood at 15.5% in 2010, at 18.4% in 2015, 19.7% in 2016, 19.8% in 2017 and 19.6% in 2018. The EU 28 average in 2018 was 15% (data published on 29th October 2020). The overall earnings gap in 2014 was 22.8%. The adjusted or “unexplained” gender pay gap was at 1% compared to an EU-28 average of 11.5% (2014 data, see the Eurostat study “A decomposition of the unadjusted gender pay gap using Structure of Earnings Survey data, 2018).

The Committee notes that the Government has made efforts to reduce the gender pay gap and has taken measures to raise awareness through gender mainstreaming. Nevertheless, the Committee also observes that the gender pay gap, as an indicator of the effectiveness of these measures, has not changed in a significant manner in the years covered by the current cycle. The gender pay gap has increased during the present cycle and it still remains very high. The measures adopted by the Government have not achieved measurable progress in this respect. Therefore, the situation in this respect is not in conformity with Article 20(c) of the Charter.

### ***Conclusion***

The Committee concludes that the situation in Latvia is not in conformity with Article 20(c) of the Charter on the ground that sufficient measurable progress in respect of the obligation to promote the right to equal pay has not been achieved.

## **Article 24 - Right to protection in case of dismissal**

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

### **Scope**

The Committee notes that there have been no changes to the situation which it has previously considered to be in conformity with the Charter.

The Committee addressed specific targeted questions to the States (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”) concerning strategies and measures that exist or are being introduced to ensure dismissal protection for workers (labour providers), such as “false self-employed workers” in the “gig economy” or “platform” economy.

According to the report, no specific measures were taken to ensure dismissal protection for workers (labour providers), such as “false self-employed workers”, in the “gig economy” or “platform economy”. These categories of workers are afforded the same protection as all other workers. In addition, according to the report, on 30 April 2019, the Order of the Cabinet of Ministers No.209 “On Conceptual Report “On the Regulatory Framework for Services in Collaborative Economy”” was adopted. The Order aims at ensuring the implementation of the principles of the collaborative economy (platform economy) in sectoral legal enactments. The Committee asks what safeguards are included in the Order to ensure that employers hiring workers in the platform or gig economy do not circumvent labour law as regards protection against dismissal on the grounds that a person performing work for them is self-employed, when in reality, after examination of the conditions under which such work is provided it is possible to identify certain indicators of the existence of an employment relationship.

### ***Obligation to provide valid reasons for termination of employment***

In its previous conclusion (Conclusions 2016) the Committee asked whether termination of employment at the initiative of the employer on the ground that the employee had reached the pensionable age was permitted by the legislation. It notes from the report in this regard that the Labour Law does not provide for the right of an employer to terminate an employment contract with an employee on the ground that this employee has reached the retirement age. According to the Labour Law, differential treatment based on the age of an employee is prohibited when establishing employment legal relationships as well as during the period of existence of employment legal relationships, in particular when promoting an employee, determining working conditions, remuneration, training or raising of qualifications as well as when giving notice of termination of an employment contract.

As regards civil servants, Article 41 (Termination of State Civil Service Relations), Part 2 of the State Civil Service Law prescribes that, if a civil servant has reached the age of retirement determined by the State, a head of an institution or a minister is entitled to take a substantiated decision to maintain a civil servant in the position for a definite period of time, but not longer than for two years. The relevant period of time may be extended.

The Committee also notes that there are some categories of professions, in which a person can be or shall be retired or dismissed from his/her service or position, after attaining a certain age determined for that service/position, for example, soldiers, officials of state security institutions, judges, prosecutors, officials with special service ranks working in institutions of the Ministry of the Interior and the Prisons Administration. The Committee asks how these exceptions are justified.

### ***Prohibited dismissals***

In its previous conclusion the Committee noted that an employer does not have the right to give a notice of termination of an employment contract during a period of temporary incapacity

of an employee, except the case specified in Article 101, Part one, Clause 11 of the Labour Law, which provides that an employer can give a written notice of termination of employment if the employee does not perform work due to temporary incapacity for more than six months (uninterrupted) or for one year within three years (with interruptions).

The Committee asks what rules apply in case of termination of employment on the ground of long-term or permanent disability, such as the procedure for establishing long-term disability and the level of compensation paid in such cases.

### ***Remedies and sanctions***

In its previous conclusion the Committee observed that unlawfully dismissed employees may claim moral damages if the dismissal is linked to differential treatment (discrimination). The Committee asked whether moral damages could also be claimed in unlawful dismissal cases, other than on discrimination ground and if so, whether the legislation set a ceiling to the amounts that could be awarded.

The Committee notes from the report that Article 126 of the Labour Law (Compensation for Forced Absence from Work or for Performance of Work of Lower Pay) stipulates that an employee who has been dismissed illegally and reinstated in his/her previous work shall in accordance with a court judgment be disbursed average earnings for the whole period of forced absence from work. Compensation for the whole period of forced absence from work shall also be disbursed in cases where a court, although there exists a basis for the reinstatement of an employee in his/her previous work, upon the request of the employee terminates employment relationships by a court judgment.

The Committee recalls that under the Charter, workers dismissed without valid reason must be granted adequate compensation or other appropriate relief. Compensation systems are considered to comply with the Charter when they provide for:

- reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body;
- the possibility of reinstatement of the worker and/or
- compensation of a high enough level to dissuade the employer and make good the damage suffered by the victim (Finnish Society of Social Rights v. Finland, Complaint No. 106/2014, decision on admissibility and the merits of 8 September 2016, §45; Conclusions 2016, Bulgaria).

The Committee further recalls that (Statement of interpretation on Article 8§2 and 27§3, Conclusions 2011) compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues, and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.

The Committee asks whether in a case of unfair dismissal, not having a discriminatory element (i.e. not linked to differential treatment), it is possible to claim compensation for non-pecuniary damage through other legal avenues and if so, whether the legislation sets any ceiling to the amount that can be claimed.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Latvia is in conformity with Article 24 of the Charter.

**Article 25 - Right of workers to protection of their claims in the event of the insolvency of their employer**

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.

